



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

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December 13, 2013

Dr. Lula Mae Perry
Superintendent
Pickens County School District
159 Stegall Drive
Jasper, Georgia 30143

Re: OCR Complaint #04-13-1376

Dr. Perry:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint, received by OCR on June 19, 2013, filed against Pickens County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that during the 2012-2013 school year, the District failed to conduct an evaluation of her daughter's (Student) 504 eligibility when requested on XXXX. Also, the District failed to provide the Complainant with procedural safeguards after declining the Complainant's request for an evaluation.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a recipient of Federal financial assistance from the Department and a public entity. Accordingly, OCR has jurisdiction over this complaint.

Based on the complaint allegations, OCR investigated the following legal issues:

1. whether the District failed to evaluate the Student, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.35 and the Title II implementing regulation at 28 C.F.R. § 35.130; and
2. whether the District failed to provide the Complainant with procedural safeguards after declining her request for an evaluation, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.36 and the Title II implementing regulation at 28 C.F.R. § 35.130.

During OCR's investigation of this complaint, the District offered to voluntarily resolve Issue #2. Pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*, a complaint may be resolved when, before the conclusion of an investigation, the recipient or public entity expresses an interest in resolving the complaint. Based on the foregoing, OCR accepted the District's request and the District entered into the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve Issue #2. OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented. If the District fails to

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fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

With respect to Issue #1, OCR's investigation included a review of documents provided by the District and the Complainant pertaining to the issues of the complaint. Additionally, interviews were conducted with the Complainant and District staff. After a thorough review of all of the evidence, OCR determined that, based on the preponderance of evidence, there is insufficient evidence to support a finding of noncompliance with Section 504 and Title II, regarding Issue #1. The factual and legal bases for our determinations are set forth below.

Legal Standards

The Section 504 regulation at 34 C.F.R. Section 104.35(a) requires that a recipient evaluate any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in a regular or special education program.

Pursuant to Appendix A, Subpart D, to the regulation implementing Section 504, '[i]t is not the intention of the Department, except in extraordinary circumstances, to review the results of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of the regulation concerning identification and location, evaluation and due process procedures. In this case, OCR investigated whether the District complied with the procedural requirements of Section 504 when evaluating the Student. If the District complied with the applicable procedural requirements, OCR does not review the results of these decisions. Any disagreements regarding the Student's assessment, evaluations, or placement decisions should be pursued through due process. The due process hearing procedure is the proper forum for the complainant to challenge the appropriateness of the District's individual educational decisions.

OCR Policy

OCR's policy states that there is no absolute right to an evaluation on demand; however, a district is obligated to evaluate any child it suspects of having a disability that substantially limits one or more major life activities. If a parent requests that his or her child be evaluated and the district refuses to evaluate the child because it does not believe that the child is in need of regular education with supplementary services or special education and related services, the district must inform the parent of his or her right to due process to challenge its decision not to evaluate.

The regulation at 34 C.F.R. Section 104.36 requires a recipient to establish and implement a system of procedural safeguards that includes notice, an opportunity to examine records, and an impartial hearing. The regulation implementing Title II at 28 C.F.R. Section 35.130(a) and (b) is interpreted consistently with the standards set forth in the Section 504 regulation.

Section 504 does not specify the time within which an initial evaluation must be completed. However, OCR requires that placement process, which includes evaluation, be completed in a reasonable period of time. In determining reasonableness, OCR may look to state guidelines or those established under the Individuals with Disabilities Education Act (IDEA) that requires 60 days. However, exceptions can be made regarding this timeframe based upon the circumstances.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient (such

as the District) failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

Background

The Student was enrolled in the XXX at XXXX (School) during the 2012-2013 school year. According to the Complainant, around October 2012, the Student was diagnosed with XXXX, which causes her to have XXX about attending school, to be absent from school, and to become overwhelmed when testing, causing her to have stomach aches, leg pains, vomiting, etc.

Factual Findings

Allegation One – Failure to Evaluate

The Complainant alleged that in the February 2013 meeting, she requested an evaluation for the Student to determine her eligibility for services under Section 504, but a Section 504 meeting was not scheduled until XXX. She stated that on XXXXX, another Section 504 meeting was held to draft a Section 504 Plan (Plan) for the Student. She stated that after the meeting, she requested a copy of the Student's Plan, and the School could not provide it.

Documentation shows that on XXXXX, an Attendance Support Team (AST) meeting was held regarding the Student, due to her absences from the School, which the Complainant attended. Documentation also shows that during the meeting, an AST Contract (Contract) was developed for the Student, which the Complainant signed. The Complainant alleged that during the AST meeting, she requested that the Student be evaluated for Section 504 eligibility. During OCR interviews, District staff denied this assertion. The Contract does not indicate that an evaluation was requested for the Student. District staff stated that the AST meeting was scheduled to discuss the Student's attendance because she had missed 17 days of school, and during the meeting, the Complainant notified those in attendance that the Student has an XXXXX. As a result, the Student was referred to the School XXXX to discuss her anxiety issues, which is typically done when an anxiety-related issue or a disability is raised. District staff stated that the Complainant mentioned Section 504 during the meeting, but did not make a request for a Section 504 meeting or evaluation.

District staff advised OCR that the XXXX began speaking with the Complainant regarding the Student's anxiety disorder to ensure that the Student remained successful in school and also contacted the Student's previous school to obtain any information on teacher observations of the Student. District staff stated that the Complainant requested a Section 504 evaluation for the Student on XXXXX. Documentation shows that on XXXXX, a Section 504 meeting was held regarding the Student, which the Complainant attended with her Advocate. In an email dated XXXX, from the Complainant to the District, the Complainant provided a list of recommended accommodations for the Student's Plan. A Section 504 meeting was held on XXXX to draft the Student's Plan. A review of the Plan shows that all the Complainant's requested accommodations were adopted in the Plan. In a XXXX email to the Complainant, the Superintendent notified the Complainant that a copy of the Student's Plan would be available for the Complainant to pick up. In a XXXX email to the Superintendent, the Complainant acknowledged recipient of the Plan.¹

During a rebuttal call, the Complainant advised OCR that she does not have any documentation to substantiate that she requested a Section 504 evaluation for the Student in XXXX because the request was made orally. She did not provide OCR with any additional information to substantiate her complaint allegations.

¹ The Complainant subsequently received the procedural safeguards.

Analysis and Conclusion

There is no evidence that the Complainant requested an evaluation prior to XXXX. The evidence shows that Section 504 meetings were held on XXXX and XXXX regarding the Student. A Plan was developed for the Student, which included accommodations requested by the Complainant. The evidence also shows that the Complainant received a copy of the Plan. Further, even if the Complainant had requested an evaluation during the XXXX meeting, a Section 504 meeting was held on XXXX, to discuss the Student's eligibility for Section 504 services, which is within the 60-day timeframe accepted by OCR.

Based on the preponderance of evidence, OCR has determined that there is insufficient evidence to support a finding that the District failed to evaluate the Student, in noncompliance with Section 504 and Title I, as it relates to Issue #1.

This concludes OCR's investigation of the complaint and 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.

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, we 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

We wish to thank you and your staff for the cooperation shown us during the investigation of this matter. If you have any questions concerning this letter, please contact Ms. Jones, Investigator, at (404) 974-9351, or by email, at Carol.A.Jones@ed.gov, or me, at (404) 974-9374.

Sincerely,

/s/

Rosemary Smith
Compliance Team Leader

Enclosure