



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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October 31, 2014

Dr. John Tharp
Superintendent
Greendale School District
6815 Southway
Greendale, Wisconsin 53129

Re: OCR # 05-14-1221

Dear Dr. Tharp:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Greendale School District (District) on May 5, 2014 alleging discrimination on the basis of disability.

The Complainants allege that the District subjected Student A to discrimination based on disability XXXXXXXXXXXXXXXXXXXX by failing to provide them with an appropriate due process hearing in response to their December 4, XXXX request for such a hearing to resolve a dispute over Student A's educational placement.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Section 504 and Title II also prohibit retaliation against individuals because they have asserted rights protected by these laws. As a recipient of FFA from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II.

As part of its investigation, OCR conducted interviews with the Complainants and District employees. In addition, OCR thoroughly reviewed documentation provided by the District and the Complainants.

OCR has determined that the District failed to satisfy a Section 504 requirement that it provide the Complainants with an opportunity for an impartial hearing to challenge an educational placement decision for Student A, in violation of Section 504 and Title II. The bases for this determination are set forth below.

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

District Policies and Procedures

Board Policy 411¹, entitled “Discrimination and Harassment of Students Prohibited,” states that the District does not discriminate against individuals in a variety of protected categories, including individuals with disabilities. The policy also prohibits discriminatory or harassing conduct and provides a process for reporting violations of the policy. In addition, the policy describes procedures for filing informal and formal discrimination and harassment complaints and includes an appeal process.

Board Policy 411.1², entitled “Non-Discrimination and Grievance Policy Concerning Disabilities (Section 504),” briefly describes the Section 504 regulation, provides a definition of a “disabled” person and generally describes the Section 504 student evaluation process, including Section 504 “Accommodation Plans.” Board Policy 411.1 also describes the District’s specific procedures for filing student discrimination complaints under Section 504, which are separate from the procedures described in Board Policy 411 noted above. The policy provides for three methods in which to resolve Section 504 complaints: an informal procedure, a formal grievance procedure and mediation. Prior to engaging in the District’s formal grievance procedure, complainants are asked to attempt to resolve the matter informally by discussing the concern with the building principal or local Section 504 Coordinator, who in turn investigate the complaint and respond in writing to the complainant. If the complainant is dissatisfied with the response, he or she is invited to initiate the District’s four-step formal grievance procedure. Step 1 of the formal grievance procedure requires the complainant to submit a written statement of the grievance and present it to the building principal or local Section 504 coordinator. The local Section 504 coordinator then investigates the matter further and is expected to respond in writing to the complainant. If the complainant is dissatisfied with the Step 1 decision, he or she can move on to Step 2, which requires the submission of a written appeal to the Superintendent, who is expected to meet with all parties and respond in writing. If the complainant remains dissatisfied, he or she can move on to Step 3, which provides for a written appeal to the Board of Education. If the complainant remains dissatisfied with the Board’s decision, he or she can move on to Step 4, which invites the complainant to file an appeal to the Wisconsin Department of Public Instruction (WDPI) or OCR. Time frames are provided at each step in the formal complaint process.

Board Policy 411.1 also describes the District’s Mediation procedure for resolving Section 504 conflicts between parents and District staff. Board Policy 411.1 does not describe a

¹ This policy is available on the District’s web site at <http://www.greendale.k12.wi.us/pages/Greendale/Policies>

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The Complainants provided the source of their request for a Section 504 due process hearing in a XXXXXXXX email to the Director, quoting the language provided in the District's *Section 504 Parent/Student Rights* document, at item 11, which indicated that they could obtain a copy of the District's *Impartial Due Process Hearing Procedure* from the Director. In her XXXXXXXX response, the Director did not provide the Complainants with a copy of the requested document. Instead, she referred them to Board Policy 411.1, stating that the District's due process hearing procedure was described in that document and that they should file a complaint in accordance with the Student Discrimination Complaint Procedures described in Board Policy 411.1 or file directly with OCR.

OCR's review of Board Policy 411.1 found no reference to a Section 504 due process procedure. In fact, during the course of the investigation, OCR repeatedly requested a copy of the same document the Complainants had requested from the District, the District's *Impartial Due Process Hearing Procedure*, and was eventually advised that the document did not exist.

In a XXXXXXXX letter to the Director, the Complainants followed the Director's instructions; they filed for a Section 504 due process hearing by filing an internal formal complaint under Board Policy 411.1. The Complainants specified that they were "requesting an informal impartial hearing to discuss and revise the accommodations in [Student A's] 504 Plan." They also said, "The hearing is supposed to be an impartial hearing according to the Parent/Student Rights for 504 plan. We are arguing against the placement of [Student A] in XXXXXXXX. It is an inappropriate placement as we have stated numerous times in the past few months." In response, the Director acknowledged the XXXXXXXX letter as triggering Step 1 in the internal formal complaint process. She provided a written response in a XXXXXXXX letter to the Complainants in which she rejected their challenge to Student A's placement XXXXXX. She also advised the Complainants that they could proceed to Step 2 of the District's internal formal complaint process and file an appeal with the Superintendent if they were dissatisfied with her determination. In a letter dated XXXXXXXX, the Complainants advised the Director of their dissatisfaction with her determination and that they wished to proceed to the next step in the process. They also repeated their request for a copy of the District's *Impartial Due Process Hearing Procedure*.

On XXXXXXXX, the Superintendent presided over a meeting in which the Complainants presented their appeal. A District representative was present to answer questions. The Superintendent advised OCR that he considered the meeting to be an "informal 504 due

information. The Complainants replied, stating, "Please send us any and all forms that pertain to The Impartial Due Process Hearing. If this means IDEA and or 504, please send them." The Director then responded to the Complainants' clarification in another email stating, "Attached are three documents: 1) the District's Section 504 Policy, which includes directions about filing a complaint. There is no specific 504 complaint or due process hearing request form; 2) An IDEA Due Process Hearing Request fillable form; 3) An IDEA Due Process Hearing Request pdf form." She also provided a link to the Wisconsin Department of Public Instruction (WDPI) if they wished to seek additional information about due process hearing requests.

process hearing” and indicated that no one had ever requested one before. He said the District presented its case at a second meeting on XXXXX and the Complainants were not invited to the second meeting. He said that two separate meetings were held so that he could hear the presentations separately to see if there were any discrepancies or inconsistencies. The Superintendent informed OCR that a formal Section 504 due process hearing would differ from an informal hearing, in that an independent hearing officer would preside over a formal 504 due process hearing. In a letter dated XXXXXX, the Superintendent advised the Complainants that he was upholding the District’s position that Student A should remain in XXXXX class and that they could appeal his determination to the Board of Education and, if dissatisfied by the Board’s determination, they could appeal that determination to WDPI.⁵ In an email dated XXXXXXXX, the Complainants expressed their dissatisfaction with the Superintendent’s determination and criticized the manner in which the District had responded to their request for a Section 504 due process hearing.

Analysis

The District did not satisfy the Section 504 requirement at 34 C.F.R. § 104.36 that it provide the Complainants with an opportunity for an impartial hearing to challenge the decision of Student A’s Section 504 team to place her in XXXXX class. When the Complainants asked for a Section 504 due process hearing to challenge the decision, the District processed the request through its internal disability grievance procedure. The matter was first reviewed by the Director, a District employee who had participated in the Section 504 team’s decision to place Student A in the XXXX class. The matter was then appealed to the Superintendent, another District employee, who had the Complainants and District present their case to him in separate meetings, thereby rendering it impossible for both parties to hear all the evidence and confront witnesses. The administrative review by the Director and Superintendent does not meet the standards of the impartial hearing required by the Section 504 regulations at 34 C.F.R. § 104.36. For the foregoing reasons, the evidence demonstrates that the District failed to comply with the Section 504 regulation at 34 C.F.R. § 104.36 when it failed to provide the Complainants with an opportunity for an impartial hearing.

Conclusion

For the foregoing reasons, the District’s actions violated the Section 504 regulation at 34 C.F.R. § 104.36. Therefore, OCR has obtained a resolution agreement from the District that is aligned with the violations identified by OCR’s investigation and with the issues investigated, and is consistent with the applicable regulations and legal standards. The resolution agreement is enclosed with this letter. OCR will monitor the District’s implementation of the agreement.

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

⁵ OCR advised the District that WDPI does not have jurisdiction over Section 504.

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than those addressed in this letter. The Complainants may file a private suit in federal court whether or not OCR finds a violation.

The 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.

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.

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 privacy.

If you have any questions regarding this letter, please contact me at (312) 730-1593 or by email at Dawn.Matthias@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure