



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

September 24, 2015

Dr. Roger Abbe
Superintendent
Larimore Public School #44
P.O. Box 769
Larimore, ND 58251

Re: OCR Docket # 05-15-1248

Dear Dr. Abbe:

This is to notify you of the disposition of the referenced complaint filed against the Larimore Public School #44 (District) alleging discrimination based on disability. Specifically, the complaint alleged that the District discriminated against Student A, an XXXXXXXXXXXXXXXX student with a disability, when it denied him a Free Appropriate Public Education (FAPE).

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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

During the complaint investigation, OCR reviewed documentation provided by the Complainant and the District, including relevant District policies and procedures, and interviewed the Complainant.

Prior to the conclusion of OCR's investigation, the District requested to resolve the allegation that it discriminated against Student A based on his disability by failing to provide him with a FAPE during the 2014-15 school year. Additionally, OCR identified a compliance concern with respect to the District's Section 504 policies and procedures (hereafter referred to as Policies), and has determined by a preponderance of the evidence that the District's Policies are not compliant with the Section 504 and Title II regulations. Specifically, OCR determined that the District fails to comply with the requirements of Section 504 with respect to its notice of non-discrimination, non-discrimination policies, grievance procedures, evaluation and placement procedures, and procedural safeguards. The reasons for this determination are set forth below.

Applicable Legal Standards

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

Discrimination generally

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Section 504 Coordinator

The Section 504 and Title II regulations, at 34 C.F.R. § 104.7(a) and 28 C.F. R. § 35.107(a), respectively, require that recipients and public entities of a certain size designate at least one person to coordinate its efforts to comply with Section 504.

Notice of Non-Discrimination

The Section 504 regulation at 34 C.F.R. § 104.8 requires recipients to notify participants, beneficiaries, applicants, employees and unions or professional organizations holding collective bargaining or professional agreements with the recipient that the recipient does not discriminate on the basis of disability in violation of Section 504. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the nondiscrimination policy. The regulation implementing Title II at 28 C.F.R. § 35.106 requires a public entity to make available to applicants, participants, beneficiaries, and other interested parties information regarding the provisions of Title II and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such a manner as the head of the entity finds is necessary to apprise such persons of the protections against discrimination assured them by Title II.

Grievance Procedures

The Section 504 and Title II regulations, at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b), respectively, require that recipients and public entities of a certain size adopt and publish grievance procedures “for the prompt and equitable resolution of complaints alleging any action prohibited by this part.”

OCR has identified a number of elements in evaluating whether a recipient’s grievance procedures provide for the prompt and equitable resolution of complaints of discrimination and harassment. These include:

- notice to students and employees of the grievance procedures, including where complaints may be filed, as well as contact information for the recipient’s Section 504 coordinator, including name, address and telephone number;
- adequate definitions of prohibited harassment, with specific examples and an explanation that the procedures apply to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and individual(s) accused of discrimination to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;¹
- written notice to the parties, complainant and individual(s) accused of discrimination, of the outcome of the complaint; and
- an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

FAPE

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The implementation of an individualized education plan (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of providing FAPE.

¹ OCR evaluates on a case-by-case basis whether the resolution of disability discrimination complaints is prompt and equitable. OCR has noted that, based on its experience in typical cases, there is a 60-calendar day timeframe for investigations.

Evaluation, Placement, and Procedural Safeguards

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.35, a recipient must conduct an evaluation in accordance with the requirements of 34 C.F.R. § 104.35 (b), of any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement. The Section 504 regulation at 34 C.F.R. § 104.35(b) requires that a recipient establish certain standards and procedures for the evaluation and placement of students who, because of disability, need or are believed to need special education and/or related services. The Section 504 regulation at 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and making placement decisions, a recipient draw upon information from a variety of sources, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and ensure that the placement decision is made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

The Section 504 regulation at 34 C.F.R. § 104.36 requires a recipient to “establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.” Compliance with the procedural safeguards of the IDEA is one means of meeting this requirement.

District Policies and Procedures

OCR was unable to locate any of the District policies described below on its website.² Further, the 2014-15 Student Handbook available online³ was not consistent with the printed copy of the Handbook provided by the District. The printed copy of the Handbook, provided to OCR by the District, contained sections titled “Education of Exceptional Children,” which summarized District Policy FBBB described below, and “Section 504,” which briefly described a process for requesting a 504 plan. The online version of the Handbook did not contain either of these sections.

Notice of Non-discrimination

The District’s Student Handbook (both online and printed) states that:

It is the expressed intent of the Larimore Public School District #44 to provide equal opportunity for all students, free from limitations of race, creed, marital

² <http://www.larimorek12.org/>

³ http://www.larimorek12.org/uploads/2/3/5/1/23511224/hanbook-full_page_version_14-15-reduced.pdf

status, age, color, national origin, sex and disability. A copy of the Board policy is available for review in each school building administrative office and library.

Section 504 Coordinator

Although District Policy AAC-E1, described below, identifies the Superintendent as the “compliance administrator,” this information is not published on the District’s website nor is it included in the Student Handbook. Further, neither the District’s website nor the Handbook identifies the District’s Section 504 coordinator.

Non-discrimination Policy and Grievance Procedures

District Policy AAC-E1 states that the District:

supports the provisions of federal and state laws which commit all schools to the elimination of discrimination on the basis of race, creed, color, marital status, sexual orientation, national origin, gender, age and disability in employment and in those programs and activities offered to its students. It is the expressed intent of the Larimore Public School District #44 to provide equal opportunity for all students.

The policy does not inform the District community that the District’s Non-discrimination policy prohibits discrimination and harassment against students with disabilities by students, employees and third parties. The non-discrimination policy also does not indicate that the District prohibits retaliation against individuals who file a complaint or participate in an investigation.

The non-discrimination policy describes the District’s complaint procedure, which allows a person “who believes he or she has been discriminated against, denied a benefit, or excluded from participation in a district education program or activity on the basis of . . . disability may file a written complaint with the compliance administrator or follow other procedures outlined in the Affirmative Actions procedure (See policy AAC-R).”

Policy AAC-E1 does not describe any of the steps to be followed by the compliance administrator upon the receipt of a complaint. Notably, the Policy does not assure the District community that the District will conduct investigations of reports of discrimination or harassment, does not identify potential sanctions for persons found to have engaged in discrimination or harassment, does not provide an assurance of an adequate, reliable, and impartial investigation, does not designate reasonably prompt timeframes for the major stages of the complaint process, does not provide written notice of the outcome of the complaint to the complainant and individual(s) accused of discrimination, and does not contain an

Complainant, and the UVSE Director. The team identified a number of academic adjustments to be provided to Student A for the remaining XXXXXX of the 2014-15 school year and scheduled evaluative testing for Student A.

Each of Student A's teachers submitted a brief statement describing in general terms how Student A's 2014 plan was implemented. The teachers neither confirmed nor denied that they had been provided a copy of Student A's 504 plan or told by the former Principal that implementation of 504 plans was optional.

Analysis

Prior to the conclusion of OCR's investigation, the District requested to resolve the allegation that it discriminated against Student A, based on his disability by failing to provide him with a FAPE during the 2014-15 school year. The provisions of the resolution agreement are aligned with this allegation and consistent with the applicable regulations.

Additionally, OCR identified compliance concerns with respect to the District's policies and procedures. Specifically, OCR determined that the District fails to comply with the requirements of Section 504 with respect to its notice of non-discrimination, non-discrimination policies, grievance procedures, evaluation and placement procedures, and procedural safeguards.

The District's Section 504 policies and procedures, specifically, the District's designation of a Section 504 coordinator, notice of non-discrimination, non-discrimination policy, grievance procedures, evaluation and placement procedures, and notice of procedural safeguards (collectively, District Policies) do not comply with section the Section 504 regulation in several respects. First, they are not widely publicized and therefore do not provide adequate notice as required by 34 C.F.R. §§ 104.7(b) and 104.8. For example, the District Policies, with the exception of its notice of non-discrimination, are not available on the District website or in the District handbooks that are available online.

Further, although the District indicated that it has adopted the USVE's policies, it fails to provide the details of these policies, including the procedural safeguards, the protections they afford parents, and how to locate the policies themselves. Accordingly, OCR has determined that the District has failed to adopt and publish standards for the evaluation and placement of students who, because of disability, need or are believed to need special education and/or related services, as required by the Section 504 regulation at 34 C.F.R. § 104.35(c), and further failed to "establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or

guardian and representation by counsel, and a review procedure.,” as required by 34 C.F.R. § 104.36.

Finally, none of the District Policies identify the District’s Section 504 Coordinator, as required by 34 C.F.R. §§ 104.7(a) & 104.8(a), and 28 C.F.R. § 35.107(a), and the District’s grievance procedures do not: (1) assure the District community that it will conduct investigations of reports of discrimination or harassment, (2) identify potential sanctions for persons found to have engaged in discrimination or harassment, (3) provide an assurance of an adequate, reliable, and impartial investigation, (4) designate reasonably prompt timeframes for the major stages of the complaint process, (5) provide written notice of the outcome of the complaint to the complainant and individual(s) accused of discrimination, and (6) contain an assurance that the District will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate, as required by 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b).

Therefore, after carefully considering all the evidence, and for the reasons noted above, OCR finds that the District’s Policies do not comply with the Section 504 and Title II regulations.

To resolve the complaint allegation and the above-described Section 504 and Title II compliance determinations, the District agreed to enter into a resolution agreement (the Agreement) with OCR on September 22, 2015. The provisions of the resolution agreement are aligned with the complaint allegation and the compliance concern identified by OCR, and they are consistent with the applicable regulations.

OCR will monitor the District’s implementation of the Resolution Agreement until the District is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Resolution Agreement will address all of OCR’s Section 504 and Title II compliance findings. OCR looks forward to receiving the District’s first monitoring report, which is due by October 15, 2015.

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.

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 individual may file a complaint alleging such treatment. The Complainant may also file a private suit in federal court whether or not OCR finds a violation.

Page 10 – Dr. Roger Abbe
OCR Docket #05-15-1248

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.

We wish to thank you for the cooperation extended to OCR during our investigation. If you have any questions, please do not hesitate to contact Tom Okawara by phone at 312-730-1597, or by e-mail at Tom.Okawara@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure