



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

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March 31, 2017

Dr. Linda L. Dvorak
Superintendent
Iroquois West Community Unit School District #10
529 East Second Street
Gilman, IL 60938

Re: OCR Docket #05-17-1003

Dear Dr. Dvorak:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), completed its investigation of the complaint filed against Iroquois West Community Unit School District #10 (District) alleging discrimination on the basis of disability.

Specifically the complaint alleged that the District engaged in discrimination on the basis of disability during fall 2016, when the District:

- 1) failed to conduct an evaluation in a timely manner to determine whether a student (Student A) at Gilman Elementary School (School) is an individual with a disability in need of special education or related services;
- 2) failed to provide Student A's parent with notice of the District's system of procedural safeguards; and
- 3) denied Student A the opportunity to go to the computer lab prior to the start of school while allowing non-disabled students to do so.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 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, 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 its investigation, OCR reviewed data provided by Student A's parent and the District and interviewed Student A's parent and District personnel. OCR has determined that the preponderance of the evidence establishes that the District failed to comply with the applicable regulations with regard to allegations #1 and #2 and that the evidence is insufficient to establish that the District discriminated against Student A with regard to allegation #3. The reasons for these determinations 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.

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.

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The Section 504 regulation, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iv), provides in relevant part that a recipient shall not deny a qualified individual with a disability an aid, benefit, or service or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability.

In analyzing whether different treatment on the basis of disability in violation of the above regulations has occurred, OCR first determines if there are any apparent differences in the treatment of similarly-situated individuals on the basis of disability. If such differences are found, OCR evaluates the reasons, if any, offered by the recipient to explain any differences in treatment to determine whether the reasons are legitimate and non-discriminatory or a pretext for unlawful discrimination. Additionally, OCR examines whether there is other information showing that a recipient treated the individual in a manner that was inconsistent with its established policies and procedures or whether there was any other evidence of disability discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.35, requires a recipient that operates a public elementary or secondary education program or activity to conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services prior to placing the student in regular or special education or making any significant changes in the student's placement.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires the recipient to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, 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 Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement.

District Policies

The District's Equal Educational Opportunities policy, located online in the District's Parent Student Handbook (Handbook),¹ states that equal educational and extracurricular opportunities will be available for all students without regard to physical or mental disability and other bases.

¹ http://wp.iwest.k12.il.us/district/files/2016/09/DISTRICT_HANDBOOK16-17.pdf

The Handbook also includes the District's Education of Children with Disabilities policy, which states that the District will provide a free and appropriate public education to all children with disabilities enrolled in the District. The policy further states that for students who are eligible for services as defined by Section 504, the District will establish and implement a system of procedural safeguards that covers the student's identification, evaluation and educational placement.

The District's Accommodating Individuals with Disabilities policy, also in the Handbook, states that individuals with disabilities will be provided an opportunity to participate in all school-sponsored services, programs, or activities on an equal basis to those without disabilities and will not be subject to illegal discrimination. The policy provides the names and contact information of individuals to whom complaints of discrimination based on disability may be directed.

Facts

Student A attended first grade at the School during the first few months of the 2016-2017 school year, after attending kindergarten at a different school in the District during the 2015-2016 school year. According to documentation submitted by the District, Student A had difficulty early in the 2015-2016 school year leaving his parent and transitioning at the start of the school day. Student A's kindergarten teacher provided a sensory/calming area for Student A which helped him work through the transition to school at the start of the day; District documentation indicates that Student A no longer needed the sensory/calming area after a few weeks. On October 8, 2015, Student A's parent submitted an email requesting an evaluation to determine whether Student A was a student with a disability in need of special education and submitted medical documentation. On October 16, 2015, District personnel and Student A's parent met to discuss the evaluation request. The District determined that an evaluation was not warranted and provided Student A's parent with written notice of the District's system of procedural safeguards, including her opportunity to challenge through a due process hearing the decision not to evaluate Student A. The parent did not challenge the decision, and Student A successfully completed his kindergarten year.

Student A enrolled in first grade at the School in fall 2016. Student A's parent told OCR that she contacted the School's Principal to inform him of Student A's disability and requested a Section 504 Plan. Documentary evidence provided by the District shows that on August 8, 2016, Student A's parent sent an email to the Superintendent and Principal informing them of Student A's anxiety and ADHD and attaching medical documentation from Student A's therapist. The August 8 correspondence stated that Student A's parent "wished to discuss the possibility of a Section 504 Plan" for Student A. Student A's parent told OCR that the Principal called her in mid-August 2016 and told her that he reviewed Student A's file, met with the previous school's principal and determined that a Section 504 evaluation was not warranted. Student A's parent said that the District did not provide her with notice of its system of procedural safeguards or a written denial of her request.

According to the District, the Principal contacted the Executive Director of the Iroquois Special Education Association, the special education co-operative that serves the District, and they

agreed he would contact the parent in response to the August 8 e-mail. The Principal said that he contacted Student A's parent, who discussed her concerns about Student A's social interaction issues. The Principal said that Student A's parent mentioned that Student A received interventions at his previous school and said she wanted to discuss a plan with him to address Student A's social interaction prior to the start of school. He said that he told her that he would speak with Student A's previous principal to learn what interventions had been provided for Student A. The Principal told OCR that the principal of the other school acknowledged that Student A had minor problems adjusting to school initially and that after they instituted interventions, Student A successfully adjusted to the school environment. He said that he contacted Student A's parent and told her that, with her permission, he wanted to implement similar interventions for Student A. He said that he advised her that if the interventions were not successful, the District would evaluate Student A for a Section 504 Plan. The Principal said that Student A's parent agreed to providing Student A with interventions instead of proceeding with an evaluation, so the District did not evaluate Student A for a Section 504 Plan or provide the parent notice of its system of procedural safeguards. Student A's parent denied that she agreed to the interventions in lieu of an evaluation.

The communication between Student A's parent and the Principal was not in writing, other than the initial August 8 e-mail.

Student A's parent said that the Principal told her that Student A could sit in the computer lab in the mornings before school began, instead of the gymnasium with the other students, due to his social anxiety. Student A's parent said that after a week, Student A was no longer allowed to sit in the computer lab and was instead left in the gymnasium with the other students. She said that Student A sat in the gymnasium crying and upset because he was not allowed to go to the computer lab. Student A's parent said she contacted Student A's teacher, who said that Student A was adjusting fine in the gymnasium and no longer needed to go to the computer lab.

Student A's teacher said she met with Student A's parent on August 22 to create a plan for Student A to ensure that he was comfortable at school. She stated that Student A's parent advised her that Student A would not be able to sit in the gymnasium in the mornings with the other school students, due to the noise and large number of students. Student A's teacher said she and Student A's parent decided that Student A would sit in the computer lab in the morning prior to the start of school with a Reading Specialist.

Student A's teacher said that starting in August 2016, Student A sat in the computer lab with the Reading Specialist for approximately three weeks; the Reading Specialist confirmed this and said she and Student A played computer learning games and read books in the computer lab. She stated that Student A asked her why he had to stay in the computer lab in the mornings instead of going to the gymnasium with the other students. The Reading Specialist said she asked Student A if he wanted to sit in the gymnasium in the mornings with the other students and he said he did. Student A's teacher said that she and the Reading Specialist decided to transition Student A from the computer lab to the gymnasium, because Student A wanted to visit with his friends prior to school; the Reading Specialist said she began meeting with Student A in the gymnasium in the mornings and read books together for approximately a week. Student A's teacher and the Reading Specialist said that Student A adjusted quickly. The Reading Specialist said that after a

week, she left Student A in the gymnasium and checked in with him every morning. Student A's teacher said that she observed Student A when she monitored students in the gymnasium and often saw him sitting quietly reading books like all the other students. Student A's teacher and the Reading Specialist said that they did not witness Student A crying or upset in the gymnasium; both said the parent did not complain about Student A going to the gymnasium or report any problems in the gymnasium.

The Principal said that he witnessed Student A in the gymnasium on a few occasions in the morning and did not notice him upset or crying. He said that things were going well to his knowledge and the District was pleased with his progress.

Student A's parent told OCR that Student A was only allowed to go to the computer lab for one week before he was left in the gymnasium. She also denied that Student A requested to go to the gymnasium instead of the computer lab. She said that Student A was terrified of the gymnasium. She also denied that School staff accompanied Student A to the gymnasium and said that the District left him there by himself.

Student A's teacher said that disabled and non-disabled students are permitted in the computer lab before school for reading.

Student A's parent said that she withdrew Student A from the School in November 2016 because the District failed to address Student A's issues. Student A is enrolled in another school district. Student A's parent told OCR that Student A is adjusting well in the new school district with similar interventions to those provided by the District; she said he has not been evaluated by the new district.

Analysis and Conclusion

Allegations #1 and #2

OCR must often weigh conflicting evidence to determine whether the preponderance of the evidence substantiates the allegations. The evidence established that in August 2016, Student A's parent sent an e-mail asking to discuss a Section 504 evaluation of Student A and submitted copies of medical documentation. Although the District indicated that it was unclear as to whether the parent was in fact requesting an evaluation, the Principal's subsequent contact with the special education co-operative suggested he believed the correspondence from the parent may have been intended to be a request for an evaluation. In light of the conflicting testimony between the parent and the Principal as to their subsequent communications, OCR cannot conclude that a preponderance of the evidence indicates that the parent clarified that she was not seeking an evaluation. Accordingly, OCR has determined that the District had sufficient information to suggest that Student A could be an individual with a disability who needed or was believed to need special education or related services, but failed to evaluate Student A in violation of Section 504 regulation at 34 C. F. R. §§ 104.35. Moreover, the District failed to provide Student A's parent notice of its system of procedural safeguards in connection with its decision not to conduct an evaluation, as required by 34 C.F.R. § 104.36.

The District has provided the enclosed agreement to OCR, which when fully implemented, will correct the compliance problems found in this investigation. OCR will monitor the agreement to ensure compliance.

Allegation #3

Student A's parent asserted that the District allowed Student A to go to the computer lab for one week and then refused to let him go to the computer lab before school for the remainder of his enrollment. Multiple District personnel said Student A went to the computer lab for approximately three weeks before he requested to go to the gymnasium, and those present in the gymnasium said he adjusted well to this. OCR did not find any evidence to establish that the District failed to follow its policies and procedures or evidence of similarly situated students who were treated more favorably. Therefore, OCR could not establish through a preponderance of the evidence that the District discriminated against Student A as alleged.

Based on the foregoing, OCR has determined that there is insufficient evidence to conclude that the District subjected Student A to discrimination with regard to allegation #3.

Overall Conclusions

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.

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.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

OCR would like to thank you and your staff, as well as Ms. Teri Engler and Ms. Kristen Charkow, District Legal Counsel, for the courtesy and cooperation extended to OCR during its

investigation. If you have any questions, please contact Camille D. Lee, Civil Rights Attorney, at 312-730-1561 or by email at Camille.Lee@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

cc: Ms. Teri Engler