



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

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December 5, 2017

Dr. Jerry Thacker
Superintendent
Penn-Harris-Madison School Corporation
55900 Bittersweet Rd.
Mishawaka, IN 46545

Re: OCR Case No. 05-17-1346

Dear Dr. Thacker:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its resolution activities in connection with the above-referenced complaint filed with OCR against Penn-Harris-Madison School Corporation (Corporation) alleging discrimination on the basis of disability.

Specifically, the complaint alleges that the Corporation discriminated against a student (Student A) on the basis of disability by failing to evaluate Student A for an auditory processing disorder or for sensory and emotional issues during the 2016-2017 school year.

OCR enforces 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces 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, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and a public entity, the Corporation is subject to the provisions of Section 504 and Title II.

During OCR's investigation, OCR reviewed data provided by the Corporation and the Complainant and interviewed Corporation personnel and the Complainant. Prior to the completion of OCR's investigation, the Corporation signed a Resolution Agreement (Agreement) to resolve the complaint allegation.

Legal Standards

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations and has, therefore, applied the relevant Section 504 standards in its analysis of this complaint.

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

The Section 504 regulation, at 34 C.F.R § 104.35(a), requires the Corporation to conduct an evaluation prior to making a placement decision for any student who needs or is believed to need special education or related services. The Section 504 regulation, at 34 C.F.R. § 104.35(c)(3), requires that any placement decisions about a student with a disability be made by a group that includes 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 the Corporation to provide a system of procedural safeguards that includes notice, an opportunity to examine relevant records, an impartial hearing with an opportunity for parental participation and representation by counsel, and a review procedure.

The Individuals with Disabilities Education Act (IDEA) requires school corporations to ensure that eligible students with disabilities receive appropriate special education and related services at no cost to the parents.

Facts and Analysis

Student A was enrolled in first grade in the Corporation during the 2016-2017 school year. In the previous school year, when Student A was in kindergarten, the Corporation completed an evaluation of him and determined he was not disabled.

Student A's parent believed that Student A may have a disability that explained academic and/or behavioral difficulties he was having in first grade. On October 19, 2016, she wrote to the Principal of Student A's school and requested that Student A be tested in all areas related to the suspected disability to determine whether he is eligible for special education and/or related services under IDEA and/or Section 504. The Corporation evaluated Student A, including in the areas of auditory processing, sensory (visual) issues, emotional issues, academics, and behavioral and social skills. Corporation personnel and Student A's parents met on November 21, 2016, to discuss the evaluation and determined that Student A was not a student with a disability as defined by IDEA. Corporation personnel indicated that, at that time, Student A was performing at grade level. The parents were provided notice of their rights to challenge the eligibility determination under IDEA. Corporation personnel said they discussed Section 504 during this meeting but did not make a determination as to whether Student A was a student with a disability as defined by Section 504.

Although Student A did not qualify for special education services under IDEA, the Corporation indicated at the November 21 meeting that it would provide assistance to Student A under a "Response to Intervention" (RTI) model, would develop a Behavioral Intervention Plan (BIP) to address Student A's behavioral issues, and would provide Student A with counseling.

On December 1, 2017, Student A's parent sent an e-mail to the Principal and stated she was concerned that Student A needed more than the BIP and requested that the Corporation reconvene the team to review Student A's eligibility under IDEA and Section 504. The Principal responded to discuss data collection for the BIP and other issues. No further evaluation was

conducted during the 2016-2017 school year, and Student A is not presently enrolled in the Corporation.

Prior to the conclusion of OCR's investigation, the Corporation expressed an interest in voluntarily resolving this case. In order to conclude OCR's investigation of this complaint, OCR would have had to conduct additional interviews and review additional documents. In light of the Corporation's willingness to address the allegation without further investigation, OCR determined that a voluntary resolution agreement is appropriate.

Conclusion

The District submitted a signed Agreement to OCR on December 1, 2017. The District committed to take the following actions:

- 1.) If Student A reenrolls in the 2017-2018 school year, offer Student A's parent an evaluation of Student A under Section 504 and, if the parent accepts, make a placement decision in accordance with the requirements of Section 504; and
- 2.) Provide training on Section 504, including requirements related to evaluation, eligibility determinations and procedural safeguards, to all Corporation administrators and relevant faculty and staff.

Based on the commitments the Corporation has made in the Agreement, OCR has determined that it is appropriate to close the investigative phase of this complaint. OCR will monitor the implementation of this Agreement.

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 Corporation 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 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 personal privacy.

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

We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. In particular, we wish to thank Ms. Monica Conrad, Counsel for the Corporation. If you have any questions, please contact Dan Altschul, Senior Civil Rights Attorney, at 312-730-1563 or by email at dan.altschul@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Monica Conrad