



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 2, 2018

Mr. Ed Graff
Superintendent
Minneapolis Public School District #1
1250 West Broadway Avenue
Minneapolis, Minnesota 55411

Sent via electronic mail to: XXXXXXXX

Re: OCR Docket #05-18-1286

Dear Superintendent Graff:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Minneapolis Public School District (District) alleging discrimination on the bases of disability. Specifically, the complaint alleged the District failed to provide Student A, a XXXXXXXX student with disabilities who was placed in a XXXXXXXX (Class) at XXXXXXXX (School) a free appropriate public education (FAPE) in that School staff failed to implement multiple provisions of Student A's Individualized Education Plans (IEP), including but not limited to XXXXXXXX Student A XXXXXXXX, from XXXXXXXX to XXXXXXXX.¹ In addition, the complaint raises whether the District failed to provide a FAPE to the other students with disabilities in the Class A by failing to implement their IEPs.

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 funding by the Department of Education and a public entity, the District is subject to these laws.

During the course of the investigation, OCR interviewed the Complainant, other parents who had students enrolled in the Class, and District employees, and analyzed data provided by both the District and the Complainant. Based on this information, OCR has concluded the evidence is insufficient to support most of the concerns brought forth to OCR by the Complainant. The District signed the enclosed Resolution Agreement on September 25, 2018, to resolve an issue identified as a concern by OCR.

Applicable Legal Standards

¹ The Complainant withdrew Student A from the District XXXXXXXX.

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

Discrimination

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.

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 the Section 504 standards.

FAPE

The Section 504 regulation at 34 C.F.R. § 104.33 requires that a recipient shall provide a free appropriate public education (FAPE) to all qualified students with disabilities in its jurisdiction, regardless of the nature or severity of the person's disability. FAPE is defined at 34 C.F.R. § 104.33(b) (1) 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 development and implementation of an IEP is one means by which a FAPE may be provided.

The Section 504 regulation at 34 C.F.R. § 104.34(b)(1) and (2) provides that recipients shall ensure students with disabilities participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the individual student.

Relevant District and Other Policies and Procedures

The District's Equal Education Opportunity Policy (EEO Policy), which is available online,² states that the District has a policy of providing equal educational opportunity for all of its students, and does not unlawfully discriminate on the basis of physical or mental disability.

In addition to its EEO Policy, the District has adopted a separate policy prohibiting discrimination on the basis of disability in its educational programs. This policy, which is available online,³ states that its "purpose is to protect each student with a disability from illegal discrimination on the basis of disability and provide each student with the required free appropriate public education," and to provide "equal educational opportunity to all qualified

² http://policy.mpls.k12.mn.us/uploads/policy_5000.pdf.

³ http://policy.mpls.k12.mn.us/uploads/policy_5750_2.pdf

individuals with a disability by “identifying and evaluating qualified individuals within the intent of Section 504 in the District who may need services, accommodations, or programs.”

The District also has adopted a policy establishing “the process for making claims, conducting fact-finding and taking action in claims of unlawful discrimination resulting in a violation of” its EEO Policy. This policy also designates the employees responsible for accepting and investigating discrimination complaints. The policy is also available online.⁴

The District’s Total Special Education System (TSES), which is available on the District’s website,⁵ details the District’s system to identify, evaluate, place and provide special education and related services to students with disabilities.

The Minnesota Department of Education (MDE) rule 3525.2320 (Rule) provides that where students receive 60% or more of their instruction in a special education classroom, the District must staff that classroom with a minimum of one (1) lead classroom teacher and one (1) paraprofessional for a caseload of no more than 10 students.

Background

The District classified the Class as a XXXXXXXX class because it was a XXXXXXXX classroom where students identified with XXXXXXXX received special education service programming XXXXXXXX the school day. During the 2017-2018 school year, XXXXXXXX students, including Student A, were assigned to the Class, which was the XXXXXXXX class at the School.

Facts

The Complainant alleges that the District failed to provide Student A and other SPEN students with a FAPE because the School did not provide enough staff in the XXXXXXXX classroom to implement the IEPs of the XXXXXXXX students. Specifically, the Complainant asserts that when he visited the Class it was chaotic and that Student A and the other XXXXXXXX students were not able to attend “specialist” classes⁶ due to the inadequate level of staffing. In addition, the Complainant questions the teaching credentials of the teachers who led the Class during the 2017-2018 school year. Lastly, the Complainant alleges that the School established different requirements for the XXXXXXXX students to participate in certain field trips than what it required from their general education peers.⁷

Staffing Levels in the SPEN Classroom

⁴ http://policy.mpls.k12.mn.us/uploads/regulation_5000_a.pdf

⁵ http://speced.mpls.k12.mn.us/uploads/tses_mps_2018.pdf

⁶ “Specialist” classes included physical education (PE), music, Science, Technology, Engineering and Mathematics (STEM), and visual arts classes, and the SPEN students attended these classes with their general education peers.

⁷ OCR contacted the parents of the six students who were in the XXXXXXXX class with Student A. Two of the parents, Parent A and Parent B, consented to an interview.

The District's Special Education Director (Director) stated to OCR that the District provides staffing at a higher level than the caseload guidelines require under MDE Rule for a XXXXXXXX classroom⁸ like the XXXXXXXX classroom. She explained that the District allowed the School to staff the XXXXXXXX classroom, which is the only XXXXXXXX classroom in the School, with one (1) lead teacher and two (2) paraprofessionals rather than 1 lead teacher and 1 paraprofessional as the MDE Rule requires. The Director also stated that the School has in total nine (9) paraprofessionals and two (2) behavioral support professionals, which is also more than the staffing that the state requires, and that this allows the School Principal the flexibility to reallocate staff to the SPEN classroom to meet the needs of the students if a paraprofessional was absent. The documentation provided by the District, including the SPEN students' IEPs and attendance records, shows that the School's XXXXXXXX classroom had at most an enrollment of 7 students during the 2017-2018 school year, and that none of the students required a dedicated paraprofessional.

Documentation provided by the District shows that the XXXXXXXX classroom had a permanent lead teacher for most of the 2017-2018 school year. Teacher A was the XXXXXXXX lead teacher during the fall term of 2017 until XXXXXXXX. Teacher B became the XXXXXXXX lead teacher after the winter break, XXXXXXXX, and taught the class for the remainder of the 2017-2018 school year. The XXXXXXXX classroom had a substitute teacher for a total of five (5) school days; Substitute Teacher A taught the XXXXXXXX class from XXXXXXXX to XXXXXXXX 2018, while Substitute Teacher B taught the XXXXXXXX class on XXXXXXXX, 2018. The District also represented, and several witnesses, including the Director, the School Social Worker, Paraprofessional B, and an additional XXXXXXXX parent interviewed by OCR (Parent A), stated, that the XXXXXXXX classroom typically maintained a staffing level of 1 teacher and 2 to 3 paraprofessionals. The attendance records for the three paraprofessionals assigned to the XXXXXXXX classroom further show that even when the staffing level in the XXXXXXXX classroom fell below the District's standards, the classroom was still staffed with 1 teacher and 1 paraprofessional, as required by the State of Minnesota.

Qualifications of SPEN Lead Teachers

OCR reviewed certification documents for the XXXXXXXX Lead Teachers Teacher A and Teacher B, which show that each of the teachers was qualified to teach the students in the SPEN class. According to a document from the Minnesota Professional Educator Licensing and Standards Board, Teacher A had a professional license to teach K through 12 students with XXXXXXXX and XXXXXXXX disorders and Teacher B had a limited professional license to teach students with XXXXXXXX disorders.⁹

Participation of XXXXXXXX Students in Specialist Classes

⁸ The Director explained that a XXXXXXXX classroom is a XXXXXXXX classroom in which student receive XXXXXXXX of their instruction.

⁹ Although the Complainant did not allege that the XXXXXXXX class lacked qualified substitute teachers, OCR observed that for the five school days when the class was taught by a substitute teacher, the District employed certified substitute teachers.

not support the allegation that the District did not have enough staff in the XXXX classroom to implement the students' IEPs and has closed this allegation effective the date of this letter.

Qualifications of XXXX Lead Teachers

The preponderance of the evidence also does not support the Complainant's assertion that the lead teachers assigned to the XXXX classroom during the 2017-2018 school year were not qualified to teach the class. State documents show that Teacher A and Teacher B were licensed to teach elementary-age students with disabilities and with XXXXXXXXXXXXX. Consequently, OCR concludes there is insufficient evidence to establish that Student A and his peers in the XXXX classroom were denied a FAPE because the teachers assigned as lead teacher were not qualified, and is closing this allegation effective the date of this letter

Participation of XXXX Students in Specialist Classes

OCR further concludes that there is insufficient evidence to establish that the XXXX students did not participate in their specialist classes. Most of the teachers in the specialist classes, as well as two paraprofessionals, stated that XXXX students regularly participated in their specialist classes. The parents of two XXXX students whom OCR interviewed also stated that they did not have any concerns with their children's participation in the specialist classes because their children consistently participated in those classes. Therefore, OCR has determined that the preponderance of the evidence does not support the allegation that XXXX students did not participate in their specialist classes.

Participation of XXXX Students in Field Trips

Prior to the conclusion of OCR's investigation into this allegation, the District expressed an interest in voluntarily resolving this allegation. Subsequent discussions with the District resulted in it signing the enclosed Resolution Agreement (Agreement) on September 25, 2018, which, when fully implemented, will resolve one of the disability discrimination allegations raised in the complaint. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation and are consistent with the applicable regulations. Specifically, pursuant to the Agreement, the District will send a letter to each of the students enrolled in the XXXX program during the 2017-18 school year who remains enrolled at a District school who did not participate in the Camp trip, informing the parents that their child is eligible to participate in field trips and extra-curricular activities with his or her general education peers to the maximum extent possible consistent with the terms of the child's IEP. The letter will specify that the student's IEP team, at its next regularly scheduled meeting, or sooner if requested by the parents, will consider the extent of the student's participation in field trips and extra-curricular activities with the student's general education peers. In the event that Student A XXXX in a District school prior to the end of December 2018, the District will similarly convene a meeting of Student A's IEP to determine his participation in field trips and extra-curricular activities with his general education peers. Finally, pursuant to the Agreement, the District will train School administrators responsible for overseeing field trips and extra-curricular activities, as well as all individual staff who may have been involved in the decision to limit the participation of XXXX students in the Camp trip, on the requirements of the regulation

implementing Section 504 at 34 C.F.R. §§ 104.4(a) and 104.34(b)(1)(i), with respect to ensuring that students with disabilities participate in non-academic and extra-curricular activities with their non-disabled peers to the maximum extent appropriate to the needs of the individual student.

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 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 personal privacy. The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to the District’s monitoring report, which is due December 31, 2018. OCR would like to thank you and your staff, especially XXXXXXXXXXXXXXXX, for the courtesy and cooperation extended to OCR. If you have any questions, please contact Mark Erickson at (312) 730-1574 or by e-mail at mark.erickson@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

cc: XXXXXXXXXXXXXXXXXXXX

Enclosure