



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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May 1, 2017

Superintendent Lillian Torrez
Taos Municipal Schools
310 Camino De La Placita
Taos, NM 87571

Re: Taos Municipal Schools
Case Number: 08-16-1044

Dear Dr. Torrez:

This letter is to inform you of the disposition of the above-referenced complaint filed against Taos Municipal Schools (District) with the U.S. Department of Education Office for Civil Rights (OCR), on November 4, 2015, alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District failed to provide him a free and appropriate public education (FAPE) by (1) failing to evaluate the Complainant for post-concussion syndrome in a timely manner, (2) failing to fully implement his individualized education program (IEP), and (3) requiring him to use his family's funds or insurance to pay for speech therapy.

We are responsible for Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department); and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit 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 and regulations.

With respect to the first allegation, our investigation revealed that the District did not fail to timely evaluate the Complainant for post-conclusion syndrome. During the investigation of the remaining allegations, before OCR had sufficient evidence to make findings, the District informed OCR that it wished to resolve the Complainant's allegations. Pursuant to Section 302 of our *Case Processing Manual*, a complaint allegation may be resolved when, before the conclusion of an investigation, a recipient agrees to resolve the allegation and OCR has determined that the allegation is appropriate for resolution during the investigation. OCR has not completed its investigation and does not yet have sufficient facts to reach a finding of compliance or non-compliance with respect to the second and third allegations. Therefore, OCR has determined that these allegations described below are appropriate for a Section 302 Agreement and the District signed an Agreement which, when fully implemented, will resolve these allegations.

Legal Standard

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 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Investigation to Date

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and the District and interviewing witnesses.

1. The District failed to evaluate the Complainant for post-concussion syndrome in a timely manner.

The Student sustained a concussion XXXX, and he was away from school for approximately one month. The Complainant alleged the District failed to evaluate him in a timely manner, specifically, that he and his parent kept asking for an evaluation and it took the District over 8 months to evaluate the Student and the parent had to obtain an evaluation on his own on January 15, 2015. The District considered medical documentation about the Complainant's concussion that he provided from two doctors and provided accommodations in a health plan created by the school nurse on October 22, 2014. An IEP team meeting was held on November 25, 2014, and the team decided that a speech evaluation for the concussion was appropriate. The Complainant and his father attended this meeting, and the IEP indicates that they were notified of their due process rights. This evaluation was conducted by the District beginning December 9, 2014. It is clear from the facts obtained during our investigation that the parent wanted a more comprehensive evaluation than the one conducted by the District in December, 2014. However, the decision to conduct an evaluation specific to speech only was made by a group of persons knowledgeable about the Student at an IEP team meeting. Generally, OCR does not substitute its judgment for that of the educators in placement and educational decisions. OCR does not review the results of individual placement and other educational decisions as long as the District complies with the process requirements concerning identification, location of services, evaluation, and due process procedures. Furthermore, the evidence shows that the parent obtained his own more comprehensive evaluation of the Student without any prompting from the

District. Therefore, OCR finds insufficient evidence that the District failed to evaluate the Complainant in a timely manner following his concussion. Consequently, we are closing our investigation of this complaint allegation effective the date of this letter.

2. The District failed to fully implement the Complainant's IEP.

The Complainant raised various allegations that the District failed to implement various provisions of his IEP. The District told OCR that it fully implemented the IEP, but given some of the language of the terms, could not show that it had fully implemented various terms. For example, the Complainant alleged that the District had not fully implemented an IEP term that states, "Student would benefit from lecture notes/outline beforehand", "introduced to assistive technology," and another term that states "reduce workload" regarding assignments and homework. OCR interviewed the Complainant, the Complainant's father, and the Complainant's case manager. We also reviewed documentation provided by the Complainant and the District to investigate this allegation and additional follow-up questions and interviews are required to determine whether the District failed to fully implement the Complainant's IEP. However, the District agreed to resolve this allegation and has agreed to provide staff training on the requirements of Section 504 and hold an IEP meeting to determine whether compensatory services are appropriate for any failure to provide services to the Student, and if appropriate, the District will offer to provide those services to the Student.

3. The District required the Complainant to use his family's funds or insurance to pay for speech therapy.

The Complainant alleged that the District required him to use his family's insurance to pay for the speech therapy services in his IEP. The District states that they never asked this of the Complainant's family. The District stated that the billing arrangement was pre-approved by the family in order to provide services indicated in the IEP at the location and by the contractor of the parent's choice. The District provided a signed statement from the speech therapist, who wrote that the Complainant wanted to see her for the speech services in his IEP, but she was not assigned to his high school. She also works for an outpatient clinic that did not approve of her seeing a private client in their facility. She wrote that she asked the Complainant's father to allow the facility to bill his insurance, and the District would reimburse him. She further wrote that the Complainant's father agreed to this arrangement. OCR's investigation, to date, was not complete, and OCR had not determined whether the District required the Student to use his family's funds or insurance to pay for speech therapy. However, the District expressed its willingness to resolve this allegation and will conduct an audit to ensure that the District has reimbursed all co-payments for speech services identified in the Student's IEP. If the District is unable to demonstrate it paid all co-payments the parent incurred, the District will reimburse the parent all outstanding co-payments. Additionally, the District has agreed to provide staff training on the requirements to provide a free appropriate public education to students with disabilities under Section 504 in order to resolve this allegation.

Conclusion

OCR will actively monitor the District's implementation of the Agreement. If the District fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings

as described in the Agreement or resume its investigation of the initial allegation. A copy of the Agreement is enclosed.

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. In addition, the Complainant may have the right to file a private suit in Federal court, regardless of whether OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact XXXX, the Equal Opportunity Specialist assigned to this complaint, at (303) XXXX or by email at XXXX@ed.gov. You also may contact me at (303) 844-2557. Thank you for your assistance in resolving this matter.

Sincerely,

/s/

Stephen Chen
Program Manager

Enclosure: Signed Resolution Agreement

cc (without enclosure): Honorable Hanna Skandera, New Mexico Secretary of Education