



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 6, 2016

Superintendent Keith Rittel
Provo City School District
280 West 940 North
Provo, UT 84604

Re: Provo City School District
OCR Case Number: 08-16-1359

Dear Superintendent Rittel:

On June 13, 2016, we accepted for investigation the Complainant's allegations that Provo City School District (District) discriminated on the basis of disability by failing to provide her son (Student) with a free appropriate public education by not providing the Student with qualified teachers since December 2015 and not timely reevaluating the Student for a Section 504 plan during school year 2015-16.

We initiated an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the 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, the District is subject to this law and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the investigation, we considered information provided by the Complainant, documents submitted by the District, and the District's response to the complaint. We also interviewed several District teachers and administrators.

I. Allegation - The District discriminated on the basis of disability by failing to provide the Student with a free appropriate public education by not providing the Student with qualified teachers since December 2015.

Legal Standard

Section 104.34(a) regulations require that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

Section 104.33(b) further states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met.

To comply with state law and District policy, special education teachers in the District need to hold a special education certification or to be concurrently enrolled in an alternative licensing program, such as the Alternative Routes to Licensure (ARL) program.

Relevant Facts and Analysis

Starting in XXXX, the Student was enrolled in XXXX at Oak Springs School. His teacher at the time was XXXX, who is a fully licensed and certified special education teacher.¹ However, in XXXX, XXXX took XXX leave, at which time Instructional Assistant XXXX became the substitute teacher of the class.² Initially XXXX was scheduled for short term XXX leave; however, this soon turned into long term XXX leave, resulting in XXXX being absent from XXXX to XXXX. During that time period, XXXX served as the long term substitute teacher for the class, until XXXX, a fully licensed and certified special education teacher, formally took over the class from XXXX in XXXX.

XXXX had been employed at Oak Springs School since XXXX and had previously served as an XXXX to the class for several years. XXXX is not a fully licensed teacher, does not hold any special education certifications, and is not concurrently enrolled in any programs where he would obtain his special education certification. During his time as a long-term substitute teacher, XXXX was supervised by XXXX, Principal at Oak Springs School, and was supported formally and informally by several special education teachers at the school, including X-names redacted-X. Despite receiving support from various highly qualified special education instructors, during this time period XXX was the sole teacher of the class.

Based on the information provided and interviews of school teachers and administrators, we find that from the period of XXXX to XXXX the Student was being solely taught by XXXX, who is not a fully licensed teacher, does not have a special education certification, and is not concurrently enrolled in a special education licensure program. Accordingly from XXXX to XXXX the District failed to provide the Student with FAPE by failing to provide the Student with qualified teachers, in violation of Section 504 and Title II.

In XXXX, the Student transferred to XXXX where he was placed in the classroom of XXXX. XXXX has been a teacher at XXXX since XXXX. When XXXX first accepted the teaching job at XXXX starting in XXXX, her hiring was conditional upon the fact that that she also concurrently enroll in an Alternative Routes to Licensing (ARL) program. In XXX, XXXX was accepted to the ARL Program at XXX University, and in XXX she enrolled in the program. The program includes instruction in diagnosing learning needs, developing individual education

¹ At the time of our investigation, XXX was no longer employed by the District and was unavailable for an interview.

² At the time of our investigation, XXX was no longer employed by the District and was unavailable for an interview.

plans, teaching and supervising special education students, and applying appropriate laws and policies. XXX received her BA in XXX from XXX University, and is still enrolled in the ARL Program. She is scheduled to complete the program at the end of school year XXXX.

Although XXX is not yet a fully licensed and certified special education teacher, because she is concurrently enrolled in an ARL program, XXX is considered a qualified teacher under state law and District policy. Accordingly, OCR has no compliance concerns regarding whether the Student has been taught by a qualified teacher since XXXX.

II. Allegation - The District discriminated on the basis of disability by failing to re-evaluate the Student during the 2015-16 school year.

Legal Standard

Section 104.35(a) 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. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Relevant Facts and Analysis

Under District policy and consistent with IDEA, re-evaluations are conducted every three years, unless the District and parent agree that another evaluation is needed.

Based on the information provided and interviews of school administrators, the Student was last evaluated in XXX and all procedures were met and followed during that evaluation; accordingly, the District is not obligated to re-evaluate the Student until XXX, unless the District and the parent agree otherwise.

The District submitted notes from all IEP meetings and related correspondence with the Complainant during the XXXX school year. The documentation does not mention that the Complainant or her counsel ever requested a re-evaluation during that time period. When asked whether she requested a re-evaluation during this time period, the Complainant shared that in XXXX she requested a re-evaluation with her mother and mental health advocates/representatives present. However, this meeting did not take place during the XXXX school year, and in fact a re-evaluation was completed as scheduled five months later in XXXX.

The Complainant provided no other documentation or proof that she requested a re-evaluation during the XXXX school year.

OCR also interviewed all of the teachers and administrators involved in the IEP process during the XXXX school year. None of the teachers or administrators recall, either during IEP meetings or in other correspondence with the Complainant, that the Complainant or her counsel requested a re-evaluation during the XXXX school year.

The Complainant also argues that a re-evaluation was required because a significant change of placement occurred when the Student changed schools from Oak Springs to XXXX. However, a change of location alone within the District does not in itself constitute a significant change of placement requiring a re-evaluation. In the Student's situation, his move from Oak Springs to XXXX did not change his IEP; the move simply changed where the services were being provided within the District and who was providing the services. There is no evidence that there were any other changes made to the Student's IEP as a result of the move. Accordingly, there was no significant change of placement because of the change of schools, and a re-evaluation was not required.

Accordingly, we find insufficient evidence that the District failed to re-evaluate the Student during the XXXX school year. OCR's investigation of this allegation is closed effective the date of this letter.

CONCLUSION

We are pleased that the District voluntarily entered into the enclosed Resolution Agreement to address the compliance determination that OCR made during this investigation. This concludes our investigation of this complaint. OCR will monitor the District's implementation of the Resolution Agreement until it is determined to be fully implemented.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of the District's compliance or noncompliance with Title II, Section 504, or other Federal civil rights laws in any other regard. Please note that the Complainant may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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.

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.

Thank you for the courtesy and cooperation your staff extended to OCR during the investigation of this case. If you have any questions regarding this case, please contact, XXXX, Attorney Advisor assigned to this case, at XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

cc: Honorable Sydnee Dickson
Superintendent of Public Instruction
Utah Department of Education

Mark Robinson
District General Counsel