



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 26, 2016

Superintendent Dan McMinimee
Jefferson County School District R-1
1829 Denver West Drive #27
Golden, CO 80401

Re: Jefferson County School District
OCR Case Numbers: 08-16-1362 & 08-16-1439

Dear Superintendent McMinimee:

We are writing to advise you of the resolution of the above-referenced complaints that were filed with our office against Jefferson County School District (District). The Complainant alleged that the District discriminated on the basis of disability. Specifically, the Complainant alleged that the District discriminated by failing to timely and appropriately evaluate her daughter (Student) for disability-related services during the 2015-2016 school year, and also for the 2015-2016 extended school year.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation 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; 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.

During our investigation, we interviewed the Complainant and reviewed documentation and other evidence provided by the Complainant and the District. We initially opened, as OCR Case No. 08-16-1362, an investigation into the allegation that the District discriminated by failing to timely and appropriately evaluate her daughter (Student) for disability-related services during the 2015-2016 school year. While we were investigating that allegation, the Complainant requested that we open an additional investigation into the allegation that the District discriminated by failing to timely and appropriately evaluate her daughter (Student) for disability-related services for the 2015-2016 extended school year. We did so, as OCR Case No. 08-16-1439. During the course of investigation, the District indicated its desire to voluntarily enter into an agreement to resolve all of the Complainant's allegations pursuant to Section 302 of our *Case Processing Manual*. We reviewed this request and determined that it was appropriate as to both cases, 08-16-1362 and 08-16-1439. This letter details our factual findings and the status of our investigations prior to receiving the District's request to enter into an agreement to resolve the allegations in these cases.

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) or a plan developed in accordance with Section 504 are two 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) 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. OCR interprets §104.35 to obligate a recipient to evaluate or re-evaluate a student under Section 504 when there is sufficient information or to indicate that the student may have a disabling condition that requires special education or related services, including consideration of whether a student's previously known disabling condition has changed in a manner that warrants a reevaluation of the student's placement. The information that prompts this obligation may come from staff, a parent, or other persons. 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.

Our investigation established that after Student missed several days of school at the start of the 2015-2016 school year, Complainant and her husband met with Student's school staff on or about XXX, 2015. Our investigation further established that, after that meeting, a Section 504 Plan was developed and dated XXX, 2015 (October 504 Plan). Complainant alleges that the October Section 504 Plan was not properly based on evaluation data, did not include input from those most knowledgeable about the Student, and insufficiently accommodated Student's disability. The District contends that it properly gathered evaluation information, including information from Student's parents, and that Complainant contributed to the development of the Plan, received a copy of Student and Parent Rights under Section 504, and agreed to the October 504 Plan as written. OCR would need further investigation into the District's assertions that it followed appropriate procedural requirements with regard to the October 504 Plan, in order to reach a compliance determination.

Our investigation established that Student did not return to her school for any of the remaining 2015-2016 school year. Our investigation established that Complainant sought to enroll Student in the XXX and also sought to obtain homebound instruction (HBI) for Student, and eventually succeeded. Complainant alleges difficulties at all stages of this process that lasted the remainder of the school year, including initial reticence by school and District staff to make these placements and make them in ways that accommodated Student's disability and, thereafter, unclear communication and unresponsiveness by District staff regarding pre-requisites to both XXX and HBI that first led to unacceptable delay in beginning instruction (with XXX not beginning until XXX and HBI in XXX) and then allowed continuing deficiencies in instruction to continue. Also in terms of continuing deficiencies, the Complainant alleges that the District was unresponsive to her communications regarding extended school year instruction for Student. Additionally, the Complainant alleges that the District did not properly respond to a new, serious medical diagnosis for Student in XXX 2015 or to her request for an IEP and expedited evaluation in XXX 2016, as detailed below. The District, on the other hand, contends that it made informal check-ins with the family a number of times throughout the relevant time period and that it appears that misunderstandings with, and occasional lack of responsiveness by, the family, contributed to Student's loss of instructional time. The District asserts that it timely processed Complainant's application to XXX and referred Student for HBI and that, at that time, its understanding was that Student could successfully access XXX without assistance. When Complainant reported Student's difficulty with the pre-requisites to XXX, the District asserts that it offered to make a teacher available to Student for 1:1 instruction to assist her with accessing the XXX process. In XXX 2015, the District contends that the family communicated that Student was to be hospitalized, and miss nearly all instructional time, in XXX. The District agrees that XXX instruction began in XXX 2016 and asserts that, after it became clear Student was not doing well in XXX, it offered a 1:1 teacher in addition to XXX, who provided the accommodations in place in Student's October 504 Plan (such as access to food and drink). In order to reach a compliance determination, OCR would need further investigation into the communications between the District and Complainant between XXX and XXX in particular, and in the remainder of the school year as well. OCR reviewed a number of emails from the Complainant from this time period (and before and after) but would need further investigation into non-written communications and the District and Complainant's respective understandings of the status of Student's placement(s) in XXX and XXX. In particular, OCR would need to review the nature of the HBI placement, including on what subjects the HBI teacher was to instruct and whether that instruction was required or was supplementary to XXX, and on whether the timing of that instruction reasonably accommodated Student's disability.

Our investigation also established that in XXX 2016, Complainant requested an IEP and expedited evaluation, and that the evaluation did not begin until XXX 2016. The Complainant alleges that the evaluation did not begin until after (and because) she filed a complaint with OCR in XXX 2016. The District contends that in both XXX and XXX it made offers to hold a meeting to review and consider revising Student's October 504 Plan, but received no response. Our investigation established that the District evaluated Student and, in XXX 2016, determined that she was ineligible to receive special education and related services pursuant to the IDEA. The District provided its evaluation data and IDEA eligibility meeting records, including evaluation data and prior written notice.

Meanwhile, our investigation established that the Complainant and District communicated beginning in XXX 2016 about summer XXX instruction for Student. The Complainant alleges that the District failed to timely and appropriately evaluate Student for disability-related services for the 2015-2016 extended school year. The District responds that it communicated about XXX instruction and the District's Section 504 Compliance Officer offered the family reimbursement for Student's summer schooling to compensate for the instruction time lost during the fall semester of the 2015-2016 school year, pending the family's submission of receipts for the services, which the family has not yet done. OCR has reviewed documents submitted by Complainant showing discussion of summer XXX instruction. Thus, in order to reach a compliance determination, OCR would need to further investigate any additional communications between the family and District regarding instruction over the summer or the extended school year, including reviewing any additional documents and interviewing District staff such as Student's XXX and HBI teachers regarding whether there was sufficient information or changed circumstances to indicate that Student may have required extended school year services.

Finally, our investigation also established that, in XXX 2016, the District and family met to review and revise Student's Section 504 Plan and that Student has returned to school (*i.e.*, is no longer receiving XXX or HBI) with accommodations.

X – paragraph redacted - X

The Student is an XXX-grader who will remain a student in the District for nearly XXX more school years. In light of this continuing relationship, the fact that the District has completed an IDEA evaluation and a revised Section 504 Plan with the family, and the District's willingness to enter into a voluntary resolution agreement, OCR has determined a voluntary resolution agreement is appropriate in this case.

A copy of the signed Resolution Agreement will be sent under separate cover. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports demonstrating that the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of these complaints 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. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close these cases and will send a letter to the District, copied to the Complainant, stating that these cases are closed.

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

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you and your staff and counsel extended to us during the investigation of these cases. If you have any questions, please contact XXX, Attorney, at XXX, or me at XXX.

Sincerely,

/s/

XXX
Supervisory General Attorney

cc via email:
cc

XXX, counsel for District
Honorable Katy Anthes - CDE