



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

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April 10, 2018

Mr. Curtis Finch, PhD, Superintendent
Deer Valley Unified School District
20402 North 15th Avenue
Phoenix, Arizona 85027

Via email only to XXXX

Re: **Deer Valley Unified School District**
OCR Case Number: 08-18-1066

Dear Superintendent Finch:

We write to inform you of the resolution of the above-referenced complaint, filed on November 13, 2017, against Deer Valley Unified School District (“District”), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District, at XXXX XXXX School (“School”), inappropriately denied his son (“Student”) special transportation.

Jurisdiction

The Office for Civil Rights (OCR) of the U.S. Department of Education (“the Department”) is responsible for enforcing: Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and its implementing regulation at 34 Code of Federal Regulations (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 (“Title II”), 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.

Procedural History

OCR opened an investigation of the allegation and sent the District a data request on November 28, 2017. After the District provided a data response, but before OCR conducted additional investigation and issued a final determination, the District expressed an interest in taking voluntary action to resolve the Complainant’s allegation. We determined that it was appropriate, pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM), to resolve the allegation with an agreement without completing a full investigation of the allegation.

Facts

Prior to ceasing the investigation, we found the following facts.

The XXXX-year-old Student resides in the District. The Student and Complainant reside within the attendance boundaries for XXXX School (“School A”), but reside closer to XXXX School (“School B”).¹ School A is X.X miles from their home, whereas School B is X.X miles from their home.² The Student has autism and an individualized education program (IEP) under the developmental delay (DD) area of eligibility.

In XXXX 2016, the Student entered the District as a XXXX-year-old student in the developmental preschool classroom at School B.³ A team met, on XXXX XX, 2016, to review eligibility and develop an IEP for the Student. The IEP generated on that day indicates that the Student’s “home school” was School B and his “attending school” was also School B. The “Least Restrictive Environment” section of his IEP read, “[The Student] will attend the developmental preschool that is closest to his home and has space for him to attend.”

The Student was assigned to School B’s preschool because School A’s preschool was at capacity at the time the Student entered the District. Consequently, according to the District, transportation for the Student was offered, but the Complainant declined. The Student attended School B for the remainder of the 2015-2016 school year (SY).

According to the District, the Complainant was informed that School A had space and became available for the Student for the 2016-2017 SY, and that transportation could be provided for School A. The Complainant declined and decided to have the Student continue attending School B for the entirety of the 2016-2017 SY.

The Student’s IEP, dated XXXX XX, 2017, indicates that his “home school” was School B and his “attending school” was also School B. The “Least Restrictive Environment” section of his IEP read, “[The Student] is attending [School B], rather than his home school, [School A]. At the time of initial evaluation, [School B] was the program closest to his home with space and for continuity and consistency, parents asked to have him continue at [School B].” So, the IEP contained contradictory information. The District reported to OCR that School B being listed as both the “home school” and the “attending school” was “a clerical error.” The District wrote, “The team clicked the wrong school on the student profile page.” Regardless, special transportation was *not* included in the Student’s IEP.

On XXXX XX, 2017, the Complainant inquired, via email, with the Student’s teacher at School B (“Teacher B”) about setting up transportation for the student for the 2017-2018 SY. The Complainant did not indicate that the request was for special education transportation. Teacher B replied, “I have just spoken with our early childhood manager. The transportation department will not provide transportation to children who are not attending their home school. Students who are open enrolled, as [the Student is], are ineligible for transportation services. If you would like to access transportation services, [the Student] would need to attend his home school, [School A].” District Policy JFB reads, in relevant part, “Transportation is not provided to

¹ See DVUSD Attendance Area for K-6 and K-8 Students, Deer Valley Unified School District, <https://www.dvUSD.org/site/Default.aspx?PageID=243> (last visited: Feb. 21, 2018); T.O.M. WebRoutes, Deer Valley Unified School District, <http://mybus.dvUSD.org/> (last visited: Feb. 21, 2018).

² The distances were calculated using Google Maps (www.google.com/maps).

³ District Policy JEB reads, in part: “A child evaluated and recommended for special services for a disability in accord with statute, and who has reached the third (3rd) birthday, may be admitted to preschool.”

students on open enrollment status.” The Complainant replied to ask Teacher B if the Early Childhood Manager (“Manager”) knew the Student had an IEP created by School B. Teacher B replied, “In XXXX 2016, we discussed this, and we were able to make accommodations for [the Student and his sister] to continue at [School B], with the understanding that they would not be transportation eligible. This is the same rule that applies to K-12 students.”

On XXXX XX, 2017, the Complainant spoke with the principal at School A (“Principal A”) about transportation for the Student at School B and the possibility of the Student attending School A. In an email later that day, Principal A assured the Complainant that the Student could attend School A as his “home school” and would still have his IEP in place at School A.

Additionally, on XXXX XX, 2017, the Complainant faxed and emailed a letter to the District’s Director of Student Support Services (“Director”) requesting transportation for the Student to-and-from School B and an “emergency” IEP team meeting. The Complainant wrote, in part:

The reason for asking for transportation for the following school semester for [the Student] is because XXXX and I need to go back to work. It is impossible for me to continue to shuttle [the Student] back and forth to preschool which has XXXX ... On top of everything I’ve explained, [Teacher B] goes on to tell my wife that having [the Student] on this bus is ‘very expensive’ on the Special Education Program. ... We are only asking for transportation for [the Student] per his entitlement to receive a Free Appropriate Public Education (FAPE).

The Complainant also forwarded previous emails to the Director, adding, “I’m not sure why they are denying my request under the Individuals with Disabilities Education Act (IDEA).”

On May 18, 2017, a developmental preschool teacher at School A (“Teacher A”) emailed the Complainant, in part, “I am excited to hear that [the Student and XXXX] may be joining our preschool here at [School A] for the 2017-2018 school year!!” The Complainant replied, in part, “Thank you for responding [sic] we are so excited to having [sic] XXXX at [School A]. ... As you know we ‘desperately need’ transportation for both [the Student and XXXX] for the next semester and that is a big concern for us because XXXX.”

On May 19, 2017, the Director responded to the Complainant’s letter. She wrote, in part:

[The Manager] explained that [the Student’s and XXXX] home school is [School A] and the current service school is [School B]. ... Transportation as a related service is an IEP team decision. If the IEP team decides that transportation is necessary and is based upon disability and need, then the team would base its decision on data. However, as XXXX are currently open-enrolled at [School B], it is district policy that transportation is not provided. ... If you choose to return to your home school, you may schedule an IEP meeting, review data with the IEP team and the team may decide to add transportation as a related service.

On May 19, 2017, the Complainant met with Principal A and Teacher A to discuss the Student’s transition to School A.

On XXXX XX, 2017 (the last day of the 2016-2017 SY), the Student's IEP team met. The Prior Written Notice (PWN) from the meeting indicates that the Complainant "requested specialized transportation to be provided to and from [School B] where [the Student] attends on open enrollment."⁴ The PWN then reads:

[The District] informed parents that there is space available at [School A] Preschool for the 2017-2018 school year. [The District] offered to provide specialized transportation to and from the preschool program at [the Student]'s home school ([School A]). If parents continue to open enroll [the Student] at [School B], parents would provide transportation. ... Specialized transportation to [School B] was rejected because specialized transportation is only provided to [the Student]'s home school, [School A]. ... [The District] is ready, willing, and able to provide transportation to [the Student]'s home school, [School A]. Parents need to notify [the District] if they would like to obtain transportation to [School A].

On XXXX XX, 2017, a "Special Transportation Request Form" was submitted for the Student. The form requested transportation to and from School A, starting XXXX XX, 2017. For the 2017-2018 SY, the Student attends School A. He has had special transportation since the beginning of the school year (XXXX XX, 2017), even though his IEP was not updated until later. On XXXX XX, 2018, the Student's IEP team had an annual review. Daily, curb-to-curb, special education transportation to and from School A was added to the Student's IEP.

Conclusion

After reviewing initial information provided to OCR by the Complainant and District, we determined that it was appropriate to enter into an agreement that appropriately addresses the issue raised by the complaint without continuing a full investigation of the allegation. Therefore, we then drafted a Resolution Agreement ("Agreement") and sent it to the District. On April 6, 2018, we received a signed Agreement from the District. Enclosed is a copy of the signed Agreement.

When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The Complainant will be copied on our monitoring letters. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the allegation and should not be interpreted to address the District's compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

⁴ The District reports that there are no other minutes or notes from the May 23, 2017 meeting.

Please note that the Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation. 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 individual may file another complaint alleging such treatment.

This letter sets forth OCR's determination in an individual 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.

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 your attention to this matter, and for the assistance of the District's staff and attorney. If you have any questions or concerns, you may contact Jason Langberg, the attorney assigned to this case, at (XXX) XXX-XXXX or XXXX@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Resolution Agreement

cc (w/ attachment): Heather Pierson, Attorney for the School, Udall Shumway (via email)

cc (w/o attachment): Diane Douglas, Superintendent of Public Instruction
Arizona Department of Education