



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 2, 2018

Matt Throckmorton
Executive Director
Utah Military Academy
704 South 600 East
American Fork, Utah 84003
(via email only at matt@utahmilitaryacademy.org)

Re: Utah Military Academy
Case Number 08-18-1174

Dear Director Throckmorton,

On January 4, 2018, we received the above captioned complaint against the Utah Military Academy, Valdez-Peterson Campus (Academy). We are writing to advise you of the resolution of the above-referenced complaint. The Complainant alleged that the Academy discriminated against the Complainant's son (Student) on the basis of disability (several disabilities). Specifically, the Complainant alleges that the Academy failed to implement the Student's IEP, suspended the Student on the basis of his disability and failed to provide educational services during and after the Student was hospitalized because of his disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementation regulations 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; Title II of the Americans with Disabilities Act of 1990 and its implementing regulations at 28 C.F.R. Part 35. As a recipient of Federal financial assistance from the Department and a public entity, the Academy is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires public school Districts to provide a 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 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. Implementation of an IEP pursuant to the IDEA is one means of meeting these requirements.

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

Alleged Failure to Implement IEP:

The Section 504 regulations require that the Academy provide an appropriate education for each qualified disabled student within its jurisdiction. 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 persons with disabilities as adequately as the needs of non-disabled persons are met and are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. See 34 C.F.R. § 104.33(b)(1). Implementation of an IEP pursuant to the IDEA is one means of meeting these requirements.

The Complainant alleges that the Academy failed to provide the accommodations and services for the Student as identified in the Student's IEP. The Complainant alleges that the Academy did not provide any services until October (at the earliest) although school started in August. The Academy failed to provide a chair band for the Student, did not provide the Student with breaks or with extended time for assignments or tests.

Documentation from the Academy demonstrates that the student had an IEP from his former school that was updated in May 2017. The Complaint provided the Academy with a copy of the Student's IEP from his former school during the enrollment process in June 2018. However, when the Complainant called at the end of September to ask if they Academy was implementing his accommodations or providing the Student with services, Academy administration told the Complainant that they did not know about the Student being a student with disabilities or that he had an IEP. Staff members met in early October 2017 reviewed the Student's academic achievement data and created a new IEP that provided 3 minutes of consultation a day for special education and other regular education accommodations.

The Complainant alleges that she was not provided a copy of the IEP until January 2018.

The Academy provided to OCR that the Student was provided all IEP services in the general education classroom. The Academy further stated that the Student's IEP was amended in December 2017 to address a state audit and that the parent was provided a copy of the IEP in January 2018 after the Student was placed in a day treatment facility.

Before the completion of the investigation of this allegation, the Academy entered into a 302 Agreement with OCR.

Alleged denial of FAPE in Discipline

In order to determine whether the Student was disciplined because of his disabilities, OCR determines:

1. What was the Student's behavior;
2. What are the characteristics of the student's disabilities;
3. What are the actions and discipline identified in the Academy's discipline code?

It is also important to note that a District's failure to implement the Student's IEP is a factor in the analysis.

The Complainant alleged that the Student was written up numerous times and given a 2 day out of school suspension for behavior related to his disability.

The Academy stated that the student received approximately 20 referrals for inappropriate behavior.

Before the completion of the investigation, the Academy entered into a 302 Agreement with OCR to address this issue.

Alleged Failure to provide Homework Materials

In order to determine whether the Academy failed to provide educational services during and after the Student was hospitalized because of his disabilities, OCR determines

1. What are the Academy's policies and procedures for students who cannot attend school;
2. How many days of education that the Student missed;
3. Whether the Academy followed its policies and procedures for providing services to homebound or hospitalized students.

The Complainant alleged that she requested homework for the Student when the Student was hospitalized in early December 2017 and that the Academy did not provide the needed work. She filed this complaint with OCR on January 4, 2018.

The Academy provided documentation of the email messages between the parent and the Academy and dates for when it provided the requested homework. It also provided documentation concerning moving the Student to its Viper program, which is an online program.

Before the completion of the investigation of this allegation, the Academy entered into a 302 Agreement with OCR to resolve the complaint.

Attached to this letter is the Resolution Agreement signed by the Academy. When fully implemented, the Resolution Agreement will address the allegations in this case. OCR will monitor the implementation of the agreement.

This concludes OCR's investigation of this complaint and should not be interpreted to address the Academy'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. 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.

X – sentence redacted - X

Sincerely,

/s/

Thomas M. Rock
Supervisory General Attorney

Enclosure

cc: Sydnee Dickson State Superintendent of Public Instruction (without enclosure)
(Via email only at: sydnee.dickson@schools.utah.gov)