



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
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October 1, 2019

Dr. Leon Ben, Interim Superintendent
Window Rock Unified School District #8
P O BOX 559
Ft. Defiance, Az 86504

Sent by email only to XXXX

Re: Window Rock School District #8
OCR Case Number: 08-19-1347

Dear Dr. Ben:

On April 30, 2019, the U.S. Department of Education (Department), Denver Office for Civil Rights (OCR), received a complaint, alleging that the Window Rock School District # 8 (District) discriminated against an elementary student (Student) because of his disability.

Specifically, the complaint alleges that the District discriminated against the Student, a student with disabilities, during the 2018-19 school year when it did not conduct a timely evaluation to determine whether he was in need of special education and related services and when it did not provide him with a free appropriate public education (FAPE).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and by public entities, respectively. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

Factual Background

During the 2019-2020 school year, the Student was a 1st grade student at XXXX Elementary School (School).

At the beginning of the School year, the Complainant and the Student's then-teacher noticed in fall 2018 that the Student had difficulty concentrating and completing assignments. The Complainant told OCR that although she asked the teacher what could be done, no formal action was taken. The School experienced significant staffing changes in the Student's classroom, and at some point in the School year, the Student was placed in Teacher A's classroom.

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

On February 6, 2019, the Complainant met Teacher A at a parent-teacher conference. Teacher A informed the Complainant at the parent-teacher conference that she had attempted several classroom interventions to help the Student, but that, even with the interventions, she observed that the Student's "mind just drifts off and he tends to shut you out even when you talk directly to him." The Complainant and Teacher A discussed evaluating the Student for special education and related services, and the Complainant requested an evaluation during the parent-teacher conference. The information provided by the District and Complainant does not indicate whether the District sought the Complainant's consent to evaluate the Student after this conference.

On March 26, 2019, the Complainant emailed Teacher A to follow up on the request for evaluation. On April 8, 2019, Teacher A replied, noting that the Complainant's email had been in her junk email folder, stating that she had started paperwork to have the Student's evaluation and requested the Complainant write a letter regarding the Student's learning behavior. Teacher A stated that she believed that the Student would benefit from the evaluation and additional educational services. On April 11, 2019, the Complainant provided a letter requesting an evaluation.

On April 25, 2019, the Complainant met with the School's Principal and again requested an evaluation. The Principal stated that she had not received an evaluation referral and noted that because it was late in the School year, one could not be completed. The District's Child Study Team Procedures noted that child study's do not take place after January 13.

Teacher A completed a "Child Study Team" referral on May 28, 2019. The District did not complete an evaluation of the Student during the 2018-19 school year.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in the complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, the relevant Section 504 standards apply in analyzing the Title II issues raised in the allegations.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and

appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability

Section 504's implementing regulation at § 104.35(a) 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. A procedure consistent with the IDEA is one means of meeting this requirement.

Section 504 and its implementing regulations do not specify a time frame for evaluating a student believed to be in need of special education and related services. OCR applies a standard of reasonableness for the completion of the evaluation process. In determining whether a recipient provided a timely evaluation, OCR is informed by the regulations implementing the IDEA, as compliance with IDEA is one means of complying with Section 504. The IDEA regulations state, at 34 C.F.R. § 300.301(c)(1)(i), that an evaluation must be completed within 60 days unless the state sets a different deadline.

Analysis

During the course of our investigation, the District indicated its desire to voluntarily enter into an agreement to resolve the complaint allegation pursuant to Section 302 of our *Case Processing Manual (CPM)*. OCR carefully reviewed the documentation provided by the District and the Complainant and determined that resolution pursuant to Section 302 was appropriate. On September 12, 2019, prior to OCR completing its investigation or making any findings of fact, the District signed an Agreement which, when fully implemented, will address the issue raised in the complaint.

In accordance with Section 302 of OCR's *CPM*, the provisions of the Agreement signed by the District, when fully implemented, will address the allegation and are consistent with the information obtained during OCR's processing of this case and the applicable regulations. Therefore, OCR is closing this complaint investigation effective the date of this letter. OCR, however, will actively monitor the District's implementation of the Agreement until the District fulfills the terms of the agreement and is in compliance with the statutes and regulations at issue in this case. 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.

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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 whether or not 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 the attorney assigned to this case, XXXX.

Sincerely,

/s/

Sandra J. Roesti
Supervisory General Attorney

cc: Karen Henderson, Director Exceptional Student Services. XXXX

Enclosure: Signed Resolution Agreement