



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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August 31, 2020

Dr. Shannon Dulaney
Superintendent
Iron County School District
2077 W. Royal Hunte Dr.,
Cedar City, UT 84720

By Email only to XX

Re: Iron County School District
OCR Reference No.: 08-20-1392

Dear Dr. Dulaney:

On June 25, 2020, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging that the Iron County School District (District) discriminated against the Complainant's son (Student) on the basis of disability. Specifically, the Complainant alleged that the District discriminated against the Student based on his disability when it failed to provide a free and appropriate public education (FAPE) as a result of the use of an improper restraint.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to Section 504 of the Rehabilitation Act of 1973, and its implementing regulations, which prohibit discrimination based on disability in any program or activity operated by recipients of Federal financial assistance from the Department; and, Title II of the Americans with Disabilities Act of 1990, and its implementing regulations, which prohibit discrimination based on disability by public entities, regardless of whether they receive Federal financial assistance. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under the statutes cited above are protected from retaliation, intimidation, or coercion by recipients of Department funds and public educational entities. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulation. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

Investigation Summary

OCR notified the District and the Complainant on August 10, 2020, that OCR opened the allegation for investigation. OCR's investigation focused on obtaining the evidence necessary to determine whether the District complied with the legal standard stated below, or whether the

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

District engaged in discrimination as alleged. Specifically, the investigation consisted of requesting and reviewing records and information from the Complainant and the District,

OCR applies a preponderance of the evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

Legal Standard

The Section 504 regulations, at 34 C.F.R. Section 104.33, require 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 students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. Sections 104.34-36 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) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii)-(iii), to require school districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

There are multiple ways that a school district's use of restraint and seclusion (R&S) may result in denying students with disabilities a FAPE.¹

For a student already identified as a student with a disability, the student's behaviors that lead to restraint or seclusion may be evidence that the student's current array of regular or special education and related aids and services is not adequately addressing the student's needs. Additionally, R&S may impact students with disabilities in ways that result in new academic or behavioral difficulties and needs (*e.g.*, new types of misbehavior, impaired concentration, increased absences, or social withdrawal). If a school district does not take steps to properly address new difficulties or needs, the school district will typically be found to have denied that student a FAPE. Examples of steps to properly address new difficulties or needs may include re-evaluating the student or making necessary adjustments to the student's Section 504 plan or IEP. Such adjustments may include adding counseling, a one-on-one aide, or positive behavioral interventions and supports (PBIS) strategies.

Background

The Student attended XX School (School) in the District during the 2019-20 school year. The Student is a student with disabilities, specifically the Student has been diagnosed with XX. The

¹ U.S. Dept. of Educ., Office for Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities*, p. 10 (Dec. 28, 2016), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>.

Student was in the XX grade during 2019-20 school year and his individualized education program (IEP) indicates that he received instruction in the School's XX (X). The Student received instruction in the X from his teacher (Teacher) and paraprofessional (Paraprofessional).

On XX, the Complainant filed a complaint with the District which alleged that the Teacher used an unnecessary physical restraint of the Student on XX. The Complainant further alleged that the restraint was performed incorrectly, was undocumented, and that the District failed to provide the proper notification following the restraint. The District initiated an internal investigation in response to the complaint.

On XX, the District issued the internal investigation report. The investigation included in-person interviews with the Complainant, Teacher, Paraprofessional, and additional witnesses. The investigator concluded that: a) the Teacher unnecessarily restrained the Student on XX, b) the restraint was not performed in the correct position, and c) the Complainant was not properly notified that the restraint occurred. However, the allegation that the restraint was not properly documented was found to be unsubstantiated by the evidence obtained in the investigation.

Following the internal investigation, the District held a meeting to discuss the outcome with the Complainant on XX. The Student's IEP team then convened on XX, and on XX. During these meetings, the Complainant learned that the Teacher was moved from the School to another campus. There is no indication that during these meetings the District considered whether the Student was denied a FAPE as a result of the improper restraint and, if so, whether the provision of compensatory education and related services was necessary.

On August 19, 2020, before OCR had the opportunity to fully investigate the District's actions and determine whether the actions were discriminatory, the District notified OCR that it was interested in resolving these allegations.

Analysis

Pursuant to Section 302 of the CPM, allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that this allegation may be appropriately resolved through an agreement under Section 302 of the CPM. On August 31, 2020, OCR received the District's signed resolution agreement (Agreement) (enclosed). Accordingly, this allegation is closed as of the date of this letter and OCR will monitor the Agreement to ensure compliance.

Conclusion

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Section 504, and its implementing regulations. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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 complainants 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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

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

In addition, the Department has developed guidance to support recipients, as well as the students, families, staff, and community served therein, through the unprecedented challenges faced by COVID-19. For more information, see the Department's [COVID-19 \("Coronavirus"\) Information and Resources for Schools and School Personnel](#). If the District is in need of assistance from the Department or OCR as a result of COVID-19, please don't hesitate to reach out.

If you have any questions, please contact XX, the Attorney assigned to this complaint, at XX or by email at XX. You also may contact me at XX or by email at XX.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Mr. Black Ostler, Esq.
Legal Counsel
By Email only to XX

Mr. Kevin Garrett
Director of Special Programs
By Email only to XX