



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

August 21, 2015

Mr. Robert N. Griffith
Superintendent
Summerville Union High School District
17555 Tuolumne Road
Tuolumne, California 95379-9701

(In reply, please refer to case no. 09-15-1155.)

Dear Superintendent Griffith:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Summerville Union High School District (District). OCR began an investigation on the following issue:

- Whether the District failed to provide the Student¹ with a free, appropriate public education (FAPE) by:
 - failing to evaluate the Student in a timely manner in all areas of suspected disability even though it had reason to believe that the Student needed special education or related services because of a disability,
 - disciplining the Student without following adequate evaluation and placement procedures.

OCR conducted a preliminary investigation of the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990 and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives funds from the Department, and is a public school district, and is subject to Section 504, Title II, and the regulations.

¹ OCR notified the District of the identity of the Complainant and the Student during the investigation. We are withholding their names from this letter to protect their privacy.

OCR began the investigative process by gathering information from the Complainant, and the District. Before OCR had completed its investigation, the District expressed an interest in entering into a resolution agreement. Under OCR's complaint resolution procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. On August 18, 2015, the District signed an agreement with OCR which, when implemented, will resolve the allegations raised in this complaint. For this reason, OCR did not complete its investigation or reach findings or conclusions as to whether the District had failed to comply with Section 504 and Title II in connection with those allegations.

The applicable legal standards and basis for OCR's resolution are summarized below.

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) 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.

Section 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. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. 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 act consistent with the Section 504 regulations in disciplining disabled students. 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.

The exclusion of a disabled student from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

The Complainant alleged that the District failed to evaluate the Student in a timely manner when the District had reason to suspect that the Student had a disability. The Complainant provided the District with documentation of the Student's disability when he transferred into the District in August 2014. The Student was disciplined a week after school began and the Complainant provided the District with a copy of the Student's Section 504 plan from his previous school. By October 31, 2014, the Student had been suspended for more than 10 days. The District did not implement the existing plan or re-evaluate the Student under either Section 504 or IDEA or conduct a manifestation determination hearing to determine if his misconduct were found to be a manifestation of his disability. In November 2014, the Complainant requested an evaluation under the IDEA. The District began the evaluation process, but the Complainant removed the Student from the District on January XX, 2015 after he had been suspended for more than 18 school days. The Complainant placed the Student in a XXXXX XXXXX in XXXXXXXX in March 2015 through the remainder of the school year.

Prior to the completion of OCR's investigation, the District expressed an interest in resolving the complaint through a Resolution Agreement (Agreement) with OCR pursuant to Section 302 of OCR's Case Processing Manual. OCR determined that it was appropriate to resolve the complaint under this section. OCR determined that the resolution agreement described below, when implemented, will fully resolve this issue. OCR therefore did not complete its investigation, and made no findings as to the District's compliance with Section 504 and Title II in connection with this allegation.

On August 18, 2015, without admitting to any violation of the law, the District signed the enclosed agreement to resolve this case. Pursuant to the Agreement, the District will revise and publish its policies and procedures regarding Section 504 and IDEA, and conduct trainings on the new policies and procedures for staff. The District will also reimburse the parents for the travel expenses incurred for one visit during the 2014-2015 school year. OCR has determined that the implementation of this Agreement will resolve the allegations made in this complaint.

Based upon the signed Agreement, OCR is closing the investigative phase of this complaint as of the date of this letter. OCR will monitor the implementation of the Agreement, and is informing the Complainant by concurrent letter. 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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

OCR would like to thank you, the Superintendent, for your assistance in resolving this matter. If you have any questions about this case, please contact Jessica Plitt, Civil Rights Attorney, at (415) 486-5525.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure