



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

March 23, 2016

Mr. Sean McPhetridge, Ed.D.
Superintendent
Alameda Unified School District
260 Challenger Drive
Alameda, CA 94501

(In reply, please refer to OCR Docket Number 09-15-1173.)

Dear Superintendent McPhetridge:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Alameda Unified School District (District). The Complainant alleged that the District discriminated against the Student on the basis of disability.¹ Specifically, OCR investigated the following issue:

- Whether the District denied the Student a free, appropriate public education (FAPE) by failing to follow adequate procedures for evaluation and placement of the Student.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations. Section 504 prohibits discrimination on the basis of disability 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 as amended and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives funds from the Department, is a public education system, and is subject to Section 504 and Title II and the regulations.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the District, and by discussing the allegations with the District's Attorney. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

¹ OCR previously provided the District with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

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

Legal Standard

Section 104.35(a) of the regulations 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. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner.

Under section 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. 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.

Findings of Fact

- The Complainant filed the instant complaint in February 2015 during the Student's senior year at a school in the District (School), alleging that the District failed to evaluate the Student for a suspected disability despite the fact that responsible District staff were aware that the Student suffered from anorexia and major depressive disorder.
- The Student provided a written narrative of her disability to OCR, explaining that she began to suffer from anorexia during her sophomore year, which worsened and culminated in a suicide attempt between her junior and senior years of high school.
- The Student explained in her narrative that during her sophomore year she initially attempted to hide her anorexia but finally told her mother who reached out to the Student's PE teacher to request to limit the Student's physical activity. The Student understood that the PE teacher was concerned and reached out to the Student's counselor.
- In her sophomore year, the Student began meeting with her counselor regularly and explained that it felt quite uncomfortable, as the counselor only would ask about her calorie intake and encourage her to eat more. The Student did not feel that the counselor was supportive of her emotional needs. She was never

referred to any additional counseling or for an evaluation. The Complainant began to obtain mental health services outside of the District in November 2012.

- In September 2013, at the beginning of the Student's junior year, the Complainant emailed the District to request services and accommodations for the Student following up on her concerns that she had raised the prior school year. A meeting was held but no Section 504 plan was developed.
- During the Student's junior year, she continued to have more emotional problems and rarely slept. The Student continued to meet with her school counselor who inquired about her eating habits but did not provide any mental health services or assist her with accommodations in her classes.
- The Student suffered from frequent anxiety attacks and nightmares and began missing so much school that she decided to enroll in the District's independent study program. She also continued to see mental health service providers outside of the District. However, she did not improve. During the summer between her junior and senior years, she attempted suicide.
- At the beginning of the Student's senior year, she wanted to re-enroll in traditional high school and returned to the School. The Student fell behind academically and was told that based on her credits, she would not be able to walk in her high school graduation ceremony.
- The counselor never referred the Student for an evaluation under Section 504, despite concerns regarding the Student's mental health. No one at the School told the Complainant or Student about their procedural safeguards.
- Upon being notified of the complaint, the District immediately took steps to resolve the concerns identified. The Student was found eligible to receive services under Section 504 and was placed on Home Hospital. In June of 2015, the Student completed enough credits to walk in her high school graduation while receiving a regular diploma.
- The District also provided OCR with documentation showing that the Student's counselor was given specific training to understand the scope of her duties with respect to identification, referrals for services and evaluation under Section 504. The District also conducted training for all staff on Section 504 identification, evaluation and referrals during the District's "3-day Bootcamp" prior to the start of the 2015-2016 school year. The District also updated its Section 504 Policies and Procedures and its Parent's Rights and Responsibilities Handbook and posted the changes on its website. It conducted a Parent workshop at the School on student emotional and mental health. The Complainant also stated that in May 2015, she received a "robo-call" for all parents, stating that if a student of the School had a disability, they had a right to receive services.

Analysis

As early as her sophomore year in high school, the Student provided notice of her potential disability to the school's counselor. The Student and Complainant reported that they had multiple communications with staff and the counselor at the school related to the potential disability and the significant impact it was having on the Student's ability to access her schooling. The Student's disability became so severe at one point that she had to go on independent study and missed many days of school. The facts gathered to date raised concerns because even though the District was aware of the Student's disability and its impact on her ability to access her education, it did not evaluate the Student under Section 504 or provide information to the Student and Complainant about their procedural safeguards until after this complaint was filed. Prior to completion of OCR's investigation, the District requested to resolve the matter through the enclosed resolution agreement.

Summary and Resolution

As discussed, prior to entering into the enclosed resolution agreement, the District evaluated and found the Student eligible to receive services under Section 504, conducted training for the counselor and all staff on the requirements of Section 504 with respect to evaluation and placement of students suspected of having a disability and took a number of additional proactive steps.

To address the remaining issues in the complaint, the District without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

Under the agreement, the District will reimburse the Complainant and the Student for mental health expenses while the Student was enrolled in the District up to the amount of \$900 and will create a fund for the Student in the amount of \$650 for the Student's future mental health related expenses.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Section 504 and Title II and their implementing regulations, which were at issue in the case.

This concludes the investigation of this complaint. OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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 correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank XXXX XXXXXXXX for working so closely with OCR in resolving this case. If you have any questions regarding this letter, please contact Jessica Plitt, Civil Rights Attorney at 415-486-5525.

Sincerely,

/s/

Sara Berman
Team Leader