



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

July 16, 2015

Dierdre Fennessy, Head of School  
Golden Oak Montessori School  
2652 Vergil Court  
Castro Valley, California 94546

(In reply, please refer to case no. 09-15-1175.)

Dear Ms. Fennessy:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Golden Oak Montessori School (School). The complaint alleged that the School failed to evaluate the Complainant's son (the Student) in a timely manner even though it had reason to believe that the Student needed special education or related services because of a disability.<sup>1</sup>

OCR enforces Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990 over disability discrimination complaints filed against public educational entities. The Recipient receives funds from the Department and is a public education entity. Therefore, the Recipient is subject to laws and regulations enforced by OCR.

To investigate the complaint, OCR interviewed the complainant and School witnesses. OCR also reviewed documents provided by both the complainant and the School. OCR has concluded that the evidence established a violation of Section 504 and the regulation with respect to the complaint allegation. On July 9, 2015 the School entered into an agreement with the OCR, which when implemented, will resolve the area of non-compliance found by OCR. The following is a summary of the applicable legal standard, the evidence gathered, and OCR's conclusions.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973. The Section 504 regulations, at 34 C.F.R. §104.35 (a), require local education agencies to conduct an evaluation of any student who needs or is believed to need

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<sup>1</sup> OCR notified the School of the identity of the Complainant and Student when the investigation began. We are withholding their names from this letter to protect their privacy.

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 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 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

OCR's investigation found the following:

- At the time the complaint was filed, the Student was XX years old and the Complainant suspected that he had a learning disability.
- In the spring of 2013 the Complainant requested an evaluation for the Student. At that time the School contracted with a local District to conduct the evaluations. The request to have the Student evaluated got lost by the local District. The School did not follow up to ensure the Student was evaluated when the local District failed to follow up on the evaluation request.
- Since then, the School cancelled its contract with the local District, has hired someone to be the 504 coordinator and now does its own evaluations.
- The School acknowledges that there was a delay in evaluating the Student. However, since the complaint with OCR was filed, the School conducted an evaluation of the Student. The results of the evaluation indicate that the Student is not an individual with a disability and does not qualify for related aids and services. The School provided the Complainant with information about her procedural safeguards.

When a charter school that is a recipient of federal financial assistance has reason to believe that a student needs or is believed to need special education or related aids and services because of a disability, before taking any action with respect to the student's initial placement and before any subsequent significant change in placement, the school must conduct an evaluation of the student. When a parent informs a charter school recipient that he or she believes the student is disabled and needs special education or related aids and services, the school can be considered to have reason to believe that the student needs to be evaluated.

In this case, the Complainant informed the School that the Student needed to be evaluated. The School began the process of conducting the evaluation by informing its contracted entity, the local District, to begin the evaluation process. At some point, the School learned that the local District lost the paperwork to conduct the evaluation. At that point, the School knew that the Student was still not evaluated. Staff at the School may not have understood that they were still under an obligation to ensure that the Student was evaluated. OCR found that the School failed to take action to ensure that the Student was evaluated.

For these reasons described above, OCR determined the School did not comply with Section 504 and its regulation with respect to the specific issue investigated. To resolve this complaint, the School entered into a Resolution Agreement with OCR, a copy of which is attached. OCR will monitor the School's implementation of the agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We are closing the complaint as the date of 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 they 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 School 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 complainants 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Nefertiti Sadat, the investigator assigned to this case, at (415) 486-5550.

Sincerely,

/s/

Anamaria Loya

Team Leader

Enclosure