



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

January 28, 2016

Michael H. Lin
Superintendent
Corona-Norco Unified School District
2820 Clark Avenue
Norco, California 92860

(In reply, please refer to case no. 09-15-1478.)

Dear Superintendent Lin:

On August 3, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Corona-Norco 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 issues:

1. Whether the District, in the 2014-2015 school year, failed to implement the student's Individualized Education Program (IEP);
2. Whether the District changed the student's placement with respect to Speech and Language Services without following adequate evaluation and placement procedures; and
3. Whether the District failed to respond adequately to an internal complaint made on October 15, 2014, stating that the student's IEP had not been implemented.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) 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 under Title II of the Americans with Disabilities Act of 1990, as amended (Title II) over disability discrimination complaints filed against public educational entities. The District receives funds from the Department, is a public education system, and is therefore subject to the requirements of Section 504, Title II, and their implementing regulations.

OCR gathered evidence by reviewing documents and correspondence provided by the complainant and the District. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issues investigated. 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 the student. We are withholding their names from this letter to protect their privacy.

Issue 1: Whether the District, in the 2014-2015 school year, failed to implement the student's Individualized Education Program (IEP).

Legal Standard

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 (34 C.F.R. §104.33(b)(2)). 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.

Factual Background

- During the time at issue in this complaint, the Student was in the tenth grade at a high school within the District's jurisdiction (School). The Student qualified for special education services pursuant to IDEA under the category of Other Health Impairment (OHI) and Speech and Language Impairment (SLI).
- OCR reviewed the Student's IEPs from the 2014-2015 school year. According to the operative IEP in effect at the start of the 2014 school year, which is dated April 24, 2014, the District's offer of FAPE consisted of:
 - 15 minutes of specialized academic instruction two times per week;
 - 15 minutes of speech and language consultation one time per week; and
 - a special circumstance instructional assistant (SCIA) from 7:40am until 2:40pm Monday, Tuesday, Thursday, and Friday, and from 8:40am until 2:40pm on Wednesday.
- In May of 2014, the IEP team reconvened, and the offer of FAPE was amended to state that the SCIA would start on August 11, 2014 and end on April 24, 2015, and that the services by the SCIA provided would be extended until 3:40pm.
- In October of 2014, the IEP team reconvened to discuss the Complainant's concerns with the implementation of the IEP. At the IEP meeting, it was established that the resource specialist (RS) had provided only one session of specialized academic instruction to date. The IEP team decided that the 16 sessions that were not provided would be made up prior to the end of December

2014. The District also offered ongoing after-school services in the amount of 1.5 hours per day, four (4) times per week.

- In January 2015, at the Complainant's request, the IEP team reconvened. The purpose of the meeting was to address the Complainant's concerns about the Student's organizational skills, late work, grades, and a request for change in placement. The IEP was amended to offer the following services:
 - 18 hours and 40 minutes of academic support from a certified teacher per month during the school day;
 - the termination of SCIA on January 30, 2015;
 - after school tutoring not to exceed 24 hours per month;
 - 10 minutes of specialized academic support once per week to discuss organizational skills and review the Student's planner;
 - 15 minutes of specialized academic support consultation with teachers two times per week for data collection and to monitor progress on goals;
 - 15 minutes of speech and language consultation with teachers one time per week; and
 - weekly communication of data collection sheets with the Complainant.
- The Complainant signed the agreement with the following notation: "I agree with the IEP, with the exception of [the Student's] RSP services with [teacher] and the District's offer of FAPE #1 [the Student] will receive 18 hours 40 minutes of Academic support per month...."
- In its narrative response to the complaint filed with OCR, the District stated that it interpreted this as a denial of consent to the RSP services and academic support. In an interview with OCR, the Complainant stated she was not denying consent to those services and that the District was aware of that she had not denied consent.
- The Student's after school tutoring was provided and logged beginning October 21, 2014. However, the logs did not account for the time period of March, April, and May 2015 when the Student was on the swim team. The tutor stated that she was available to meet with the Student after swim team, but the Complainant does not agree that the tutor made herself available. These facts remain unresolved.
- The next and final set of IEP meetings during the relevant period took place between March 24, 2015 and June 17, 2015. During this time, the Student's IEP team met for its annual review of his placement and services. The District's offer of FAPE for the 2015-2016 school year consisted of:

- 15 minutes of specialized academic support one time per week to discuss organization and review the Student's planner;
 - 15 minutes of speech and language consultation with teachers one time per month;
 - 15 minutes of college awareness one time per month;
 - 15 minutes of career awareness one time per month;
 - 18 hours and 20 minutes of tutoring from a certified teacher during the Student's teacher assistance period; and,
 - a SCIA for 330 minutes per day to assist with prompting the Student to complete his planner, turning in assignments, and implementing the Student's Behavior Intervention Plan.
- In addition, the District offered to provide 80 hours of compensatory tutoring services because there was no documentation that the after-school tutor made herself available after the Student's swim team meetings. The Complainant did not consent to this offer.

Analysis

The facts gathered to date raised concerns for OCR that the Student was not provided a FAPE for the 2014-2015 school year and is entitled to compensatory services. The District admitted that it failed to implement the services provided for in the Student's IEP, and to remedy that failure offered compensatory services in a subsequent IEP. However, the District also stated that it did not provide compensatory services because the Complainant did not provide consent. Subsequent IEPs included additional academic support, after school tutoring, and weekly communication with the Complainant, though it is unclear from the information provided which services were compensatory and for which services the Complainant provided consent. These matters remain unresolved. Prior to completing the investigation, the District expressed an interest in entering into the enclosed resolution agreement.

Issue 2: Whether the District changed the student's placement with respect to Speech and Language Services without following adequate evaluation and placement procedures.

Legal Standard

The Section 504 regulations, at 34 C.F.R. 104.35(a), require 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 and services decisions must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement and services 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.

Factual Background

- At an April 2013 triennial review of the Student's IEP, the IEP team determined that the Student did not meet the eligibility requirements for a student identified with a speech and language disorder. This decision was based upon a review of the Student's records, standardized assessments, observations, classroom performance, teacher/parent evaluation, and an analysis of his spontaneous speech.
- In her interview with OCR, the Complainant stated that she had objected to the removal of direct speech and language services without a formal assessment. In response to Complainant's objection, the District conducted a speech and language assessment for the Student in May 2013. The assessment results included a recommendation to discontinue speech and language services for the Student. Thereafter, based upon the results of the assessment, the IEP team determined that the Student no longer qualified for direct speech and language services. The Complainant disagreed with the team's decision to discontinue speech.
- In April 2015 at an IEP meeting, the Complainant raised concerns that speech and language services were not being provided to the Student. In response, the District reminded the Complainant that based upon the results of the May 2013 speech assessment, the Student did not qualify for direct services. The Complainant disagreed with the speech assessment from the previous school year and requested an independent educational evaluation (IEE). The District agreed to an IEE.
- The Complainant chose an assessor from a list provided to her by the District. She told OCR that the assessment had been completed.
- According to the Complainant, she is still waiting to receive written findings of the IEE. The District states in its narrative response that the IEE has been completed, but it has not provided OCR with the results of the IEE or with the Student's most recent IEP.

Analysis

The facts gathered to date raised concerns for OCR that the Student has not been properly evaluated in accordance with the procedural requirements of Section 504 and Title II. OCR reviewed the Student's IEP and determined that direct speech and language services had been discontinued in a previous school year, and that the District agreed to an Independent Educational Evaluation to determine whether such services were needed moving forward. The District told OCR that the IEE has been completed, but it has not been provided to OCR or the Complainant. Prior to completing the investigation, the District expressed an interest in entering into the enclosed resolution agreement.

Issue 3: Whether the District failed to respond adequately to an internal complaint made on October 15, 2014, stating that the student's IEP had not been implemented.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures. The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §104.7(a) and 28 C.F.R. §35.107(a)).

OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and parents of elementary and secondary school students, and employees, including where to file complaints; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Factual Background

- On October 20, 2014, the Complainant filed a grievance with the District's Human Resources (HR) department regarding her concerns with the implementation of the Student's IEP. According to a note on the complaint form, the HR Department referred the complaint back to the school to resolve the issue.

- OCR reviewed a copy of the District's Uniform Complaint Procedure (UCP). The UCP provides the compliance officer with discretion to resolve a complaint through mediation with the consent of the parties. If the complaint is not resolved through mediation, the compliance officer will conduct a formal investigation in which the complainant and the district may present relevant information. Within 60 days of receiving the complaint, the compliance officer will prepare a written report of the findings and decision. The Complainant may appeal the decision to the California Department of Education. The District's final report will include findings of fact based on the evidence gathered, conclusions of law, disposition of the complaint and rationale, corrective actions if any are warranted, and notice of right and process to appeal.
- The District asserts that after the grievance was filed there were several IEP team meetings held at which the Complainant could address her concerns. However, the District also admits that it has no record of a formal response to the Complainant's internal complaint.
- Both the District and the Complainant make reference to a "draft" response having been sent to the Complainant in June 2015. OCR reviewed the District's data response, which did not include a copy of the draft document.

Analysis

The facts gathered to date raised concerns for OCR because the complaint was returned to the school site but there is no evidence in the record to show that the compliance officer made a decision to mediate, that the mediation took place, or that the mediation resolved the issues raised in the complaint. In addition, OCR notes that a decision marked "draft", even if provided, would not provide proper written notification of the final outcome of the investigation or comply with the District's policies and procedures, which require a final written determination. Prior to completing the investigation, the District expressed an interest in entering into the enclosed resolution agreement.

Summary and Resolution

Based on the facts gathered to date, as discussed above, OCR has concerns that (1) the Student was not provided a FAPE for the 2014-2015 school year and is entitled to compensatory services; (2) the Student has not been properly evaluated in accordance with the procedural requirements; and that (2) the District has not promptly and equitably responded to the October 15, 2014 complaint and District staff have not received sufficient training to provide a such a response.

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

Under the agreement, the District will (i) convene an IEP meeting to ensure that the Student's IEP specifies placement and services necessary to provide the Student a FAPE and develop a plan to ensure that the IEP is implemented; (ii) determine if the Student requires direct speech and language services in light of the recent IEE, and/or compensatory services to account for the period in the 2014-2015 school year when the Student allegedly did not receive the services in accordance with his IEP; (iii) formally respond to the Complainant's October 2014 grievance; (iv) provide training and written guidance to all District administrative staff on the District's obligation to ensure that disability discrimination complaints are adequately responded to; and (v) provide OCR documentation of the completion of all items as required by the terms of the Agreement.

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 this complaint.

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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Abony Alexander, Civil Rights Attorney, at (415) 486-5590 or Abony.Alexander@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Debra K. Ferdman, Counsel for District