



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

March 9, 2016

Dr. Louise Johnson
Superintendent
Nevada Joint Union High School District
11645 Ridge Road
Grass Valley, CA 95945

(In reply, please refer to case # 09-15-1576.)

Dear Superintendent Johnson:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Nevada Joint Union High School District (District). The Complainant¹ alleged that the District discriminated against the Student on the basis of disability. Specifically, OCR investigated whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to evaluate 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.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990, as amended (Title II). Section 504 and its implementing regulation prohibit discrimination on the basis of disability by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, we concluded that the District did violate Section 504 and Title II with regard to the issue OCR investigated. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

¹ OCR notified the District of the identity of the Complainant and the Student when the investigation began, and we are withholding their names from this letter to protect personal 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 Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public 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 non-disabled students are met, and that are developed in accordance with the procedural requirements of sections 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. 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.² 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) of the same, 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.

Factual Findings

The following facts are relevant to OCR's analysis.

- The Complainant is a court-appointed educational rights holder for the Student, who is in foster care. According to the Complainant, the Student was moved to a California certified non-public school (the School), where he arrived with an existing IEP. The 2014-15 school year was the Student's sophomore year.

² For further information, see the Dear Colleague Letter entitled "English Learner Students and Limited English Parents" (Jointly issued by the U.S. Department of Education's Office for Civil Rights & U.S. Department of Justice) (January 17, 2015).

- At an annual IEP meeting held February 24, 2015, the Complainant expressed her view that the Student's prior assessment was inadequate because it only consisted of a document review process, and she requested additional testing to include psychological testing, and a social report including a cognitive assessment. The meeting notes page of the IEP showed that the IEP team would reconvene when the assessments were completed. An assessment plan was forwarded to the Complainant, which she signed and dated March 10, 2015, and the District received it from her on March 19, 2015.
- The School's website describes its residential treatment program as providing services for children requiring Level 14 services to address students' severe emotional, behavioral and educational problems.
- Some of the services listed in the Student's February 24, 2015 IEP included: Specialized Academic Instruction, 1,600 minutes per week; vocational assessment, counseling, guidance, and career assessment, 60 minutes per week; individual counseling, 60 minutes per month, miscellaneous auxiliary aids and services (e.g., access to a word processor, extended time); extended school year, and a Behavior Intervention Plan (BIP).
- The District's policies and procedures state that a school has 60 days (excluding school breaks of more than five days) from the time of signed parent consent for assessment to schedule and hold the IEP team meeting. Sixty calendar days from March 19, 2015, tolled for school breaks, is Saturday, May 23, 2015.
- The Student's academic testing was conducted on April 13, 2015, and the Psychological assessment by a District psychologist was conducted on May 19, 2015. Between March 19, 2015, when the School Administrative Assistant emailed the District Director of Special Education Services (Director) attaching the consented to assessment plan, and May 19, 2015, there were four emails between School and District staff regarding scheduling the District psychologist to conduct the Student's psychological assessment.
- The Complainant stated to OCR that she communicated with School staff toward the end of June, or beginning of July, 2015, about the delay in scheduling the Student's IEP meeting.
- On June 9, 2015, 11 business days after the 60-calendar day period expired, the School Administrative Assistant emailed the District's Psychologist to ask for the report of the assessment. The Director emailed the Psychologist on June 25, 2015 asking if she had finished the Student's report, and the Psychologist emailed back replying that the report was done, and that she was out until July 2, 2015. On July 4, 2015, the Psychologist emailed the School Administrator, Administrative Assistant, and the Director a copy of the report.

- Emails from the District on or around July 4, 2015 acknowledge that the IEP meeting for the Student is late, and that the Director would be on vacation until August, 2015. Emails from the Psychologist show that she would not be available due to vacations until July 22, 2015. A July 8, 2015 email from the School Administrator acknowledged that the Complainant had emailed her on June 28, 2015 expressing concern about the delay in holding the Student's IEP meeting.
- After the Director returned from vacation, he emailed the School staff on August 3, 2015 that he was available for IEP meetings.
- The Complainant emailed the School Administrator on August 16, 2015 for contact information of District staff responsible for scheduling the Student's IEP meeting.
- When the School Administrative Assistant emailed the Complainant to propose September 25, 2015 for the Student's IEP meeting, the Complainant replied by email stating that she would be on vacation between September 18, and October 15, 2015. The Administrative Assistant replied, offering Friday, November 20, 2015 as a proposed IEP meeting date, but the Complainant replied that she was not available because she does not work on Fridays. She proposed seven dates, between October 28, and December 3, 2015, for the IEP meeting. The Director was not included in this, or any other email, exchange since August 3, 2015.
- Several emails exchanged between the School Administrative Assistant, School Administrator, the Psychologist, and the Complainant between October 22, 2015 and November 6, 2015 showed efforts to schedule the Student's IEP meeting which was ultimately scheduled for, and held on, December 3, 2015.
- December 3, 2015 is 259 calendar days, or 177 business days, from March 19, 2015, the date the District received the consented assessment plan, and 192 calendar days, or 134 business days, from May 19, 2015, the date the last assessment was completed.
- The Student's IEP team met on December 3, 2015 and increased the Student's services by doubling his individual counseling time to 120 minutes per month. The team also added other services, including transitional services, career awareness, and parent counseling. The language in the Student's BIP was updated to reflect that the Student's problem behaviors had increased in severity and duration since the last IEP meeting. However, the listed services and supports in the Student's BIP remained the same as what was in the February 24, 2015 BIP.
- The District provided, as part of its response to OCR's data request, a statement from the School that included a recognition that "systemic improvements" were needed at the School to prevent delays in the IEP process and that outlined the changes the School believed were needed to prevent delays in the IEP process.

Analysis

In determining whether a district or school has timely conducted an evaluation of a student, OCR takes into consideration the timeframes provided by the IDEA regulations and the district or school's own procedures. Here, the School's policies required 60 calendar days from the date of receipt of the signed assessment plan to hold the IEP meeting; IDEA has the same requirement.

When the School Administrative Assistant offered September 25, 2015 as the first date for the Student's IEP meeting, a delay of 124 calendar days, 86 of which were business days, had already taken place since the end of the 60-day period. Accordingly, the District did not follow its own policies and procedures regarding the length of time within which the Student's IEP meeting should have been held, after it received the Complainant's signed consent for assessment.

The facts showed that at certain periods during the delay, either the Complainant or the District played a larger role in causing or continuing the delay (for example, due to vacations or other schedule conflicts). Nevertheless, the burden under Section 504 and Title II remains on the District to have timely evaluated the Student and held the IEP meeting, and the evidence supports a conclusion that the District was not diligent in discharging that burden. Accordingly, OCR concluded that the District failed to timely evaluate the Student in violation of Section 504 and Title II.

The District's offer of FAPE in the Student's December 3, 2015 IEP increased the amount of services for the Student, to include doubling the amount of his individual counseling, and adding services such as transitional services, and career awareness. The District's delay in holding the meeting for 192 calendar, or 134 business, days after receiving the consented assessment plan, for which no reasonable or legitimate nondiscriminatory reason was offered by the District, resulted in the Student not receiving twice the individual counseling services, and receiving no transitional and career services during that period that he otherwise would have received without the delay. Therefore, the Student was denied a FAPE, in violation of Section 504, Title II, and their implementing regulations.

Because the District does not currently have a process or procedure in place to prevent the types of delays which occurred in this case, similar delays could likely have occurred for other students, and might also occur in the future. This raised systemic concerns for OCR, which OCR discussed with the District.

The District, without admitting to any violation of federal law, voluntarily agreed to enter into the enclosed Resolution Agreement with OCR to resolve the complaint. Under the terms of the Resolution Agreement, the District will address systemic concerns by creating a process that ensures the timely evaluation and placement of students with disabilities in the School. It also requires the District to hold a meeting to consider the effect of the delay on the Student's education, and to decide whether the Student needs compensatory and/or remedial services as a result of the District's failure to provide

FAPE from May 25, 2015 to December 3, 2015. If such a decision is made, the Agreement will address further requirements for the provision of compensatory services and reporting to OCR.

This concludes OCR's investigation of the complaint and 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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

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 individual 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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 at issue in the case. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

If you have any questions regarding this letter, please contact staff attorney David Christensen at (415) 486-5554, or me at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Enclosure

CC: Sean Manchester
Director of Special Education for the District