



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

July 6, 2016

Mark Andreasen
Principal
Riverside Preparatory School
19121 Third Street
Oro Grande, CA 92368

(In reply, please refer to # 09-16-1174.)

Dear Principal Andreasen:

On February 11, 2016, the U.S. Department of Education, Office for Civil Rights (OCR) notified you of a complaint against Riverside Preparatory School (School). The complainant alleged that the School discriminated against her daughter (Student)¹ based on disability. The specific issues investigated by OCR were whether the School failed to provide the Student with a free appropriate public education (FAPE) by:

1. changing her placement without following adequate evaluation and placement procedures and failing to provide the complainant with notice that she could appeal the change; and
2. limiting the special education and related aids and services available to her based on unwritten School policy rather than an individualized determination.²

OCR opened the complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. 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 regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The School receives Department funds, is a public charter school, and is subject to the requirements of Section 504, Title II, and the regulations.

¹ OCR notified the School of the identities of the complainant and Student in its February 11, 2016 notification letter. We are withholding them here to protect their privacy.

² OCR notified the School of the first allegation in our February 11, 2016 letter. We informed the School of the second allegation during a May 10, 2016 phone call with the School's Director of Special Education.

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

To investigate this case, OCR reviewed documentation provided by the School and the complainant, interviewed the complainant, and gathered additional information from the Director of Special Education. With respect to Allegation One, OCR concluded the School did not violate Section 504 or Title II. With respect to Allegation Two, under Section 302 of OCR's Complaint Processing Manual, an allegation may be resolved at any time when, before the conclusion of an investigation, a school expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the School informed OCR it was amenable to resolving the Allegation Two in this manner. OCR and the School entered into the attached agreement to resolve the complaint. Accordingly, OCR did not complete its investigation or reach conclusions regarding the School's compliance with Section 504 and Title II with respect to that allegation. The facts OCR gathered during its preliminary investigation, applicable legal standards, and the disposition of the allegations are summarized below.

OCR's investigation revealed the following:

- The School is a K-12 charter school founded in 2006 by a school district (Chartering District) located in a small community. The School's total enrollment for 2015-16 was 2,356³; it is one of only three schools in the Chartering District. There is some overlap between the School's and Chartering District's staff and administrators; the Executive Director of Student Services of the Chartering District (Executive Director), for example, is also the School's Director of Special Education.
- According to the School's website, it was founded to serve "the unique needs of students not succeeding in the traditional school program" and its student body includes students from several surrounding school districts. The website states that students are admitted from a waiting list through a lottery.
- The Chartering District belongs to a SELPA. The Chartering District also has a Memorandum of Understanding with the San Bernardino County Office of Education (Office of Education) to provide special education support. According to the Executive Director, if a child enrolled in the Chartering District requires a placement not offered at one of its school sites, it provides the student with FAPE at a school site in another district within the SELPA.
- The Student has a learning disability. She was in the XXX grade during the 2015-16 school year. Prior to enrolling in the School, the Student attended a charter school in her district of residence. According to the Student's Initial IEP dated February 2013, this school provided the Student "inclusion in the general education setting with pull out small group specialized academic instruction support through [the school's] RTI model for math." This included a modified math curriculum.
- Documentation from the Chartering District shows that the Student began attending the School on January XX, 2014, when she was in XXX grade; the Chartering District is not the

³ CDE DataQuest website.

Student's district of residence.⁴ At the School, the Student was enrolled in a general education class with a "full inclusion" model in which, according to her IEPs, the special education and general education teachers collaborate to provide "all services...within the regular education setting."

- IEP records show that the Student's IEP team met on January XX, October XX, and December XX, 2015. They also show that the School assessed the Student in December 2014/January 2015 and again in December 2015.⁵
- The Student's January 2015 IEP states that she was fully mainstreamed in the general education setting with supports such as preferential seating, extra time on tests, comprehension checks by teacher, and simplified test directions, and reflects that the Student was receiving Educationally Related Mental Health Services (ERMHS). The meeting notes memorialize the IEP team's concern that the School was not the appropriate placement for the Student, and that a school in her district of residence could better meet her needs. The meeting was attended by the School's Assistant Director of Student Services, the Principal, the Special Education Teacher, three General Education Teachers, the Counselor, a representative of the Student's district of residence, a County representative, the Student, and the complainant.
- The Student's October 2015 IEP meeting notes also reflect the team's concern that the School was not the right placement for the Student. The IEP states that the School provides all services in the regular education setting; nonetheless it also provides for individualized instruction by the special education teacher in "a small group setting." The notes state that the team advised the complainant that if the Student "should require services more extensive than [the School's] program can provide, the School contracts services through the county program which is located on other district's sites." The notes state that the team would reconvene near the end of the semester to reevaluate the Student's progress. The meeting was attended by the General Education Teacher, Special Education Teacher, Counselor, Assistant Director of Student Services, a counselor from the organization providing ERMHS, the complainant, and the Student.
- The December 2015 IEP meeting was a triennial meeting. A Multidisciplinary Team Report indicates that an assessment of the Student prior to the meeting included review of records; behavior observation; information provided by parent; health, social, and cultural history; teacher interview; Woodcock Johnson Tests of Oral Language; Woodcock Johnson Tests of Cognitive Abilities; Reynolds Intellectual Assessment Scales; Woodcock Johnson Tests of Achievement; Bender visual-Motor Gestalt Test; Behavior Assessment System for Children (teacher-rating and self-rating).

⁴ The Student's district of residence at the time was different from her current district of residence.

⁵ The IEP team may have met prior to January 2015; however, other than the Student's Initial IEP, OCR did not obtain records pre-dating January 2015. The Student's January 2015 IEP is the earliest School IEP the Chartering District provided to OCR, and the December 2015 Multidisciplinary Team report is the first evaluation report.

- The Multidisciplinary Team Report reads, in part, “The student demonstrated a severe discrepancy between intellectual ability and achievement in the following...[areas]: Math Calculation, Math Reasoning, Reading Comprehension, Basic Reading Skills, Oral Expression and Listening Comprehension. The disorder is due to...Processing Deficits in the areas of Visual, Auditory, and Attention processing as well as conceptualization and association. Based on the findings in this summary it seems clear that regular education interventions could be useful, but would likely be insufficient to adequately address the student’s learning needs. [The] data suggest[s] the need for remediation, interventions, and accommodations that are outside the GE program (i.e., the academic skills deficits cannot be corrected through GE, even with interventions of categorical services).”
- The meeting notes again memorialize concerns that the Student “requires more extensive services than School offers in the full inclusion model with additional pull-out services,” and that the Special Education Teacher stated that the Student “needs remedial support that cannot be given in the structure of the pull-out class.” Under Supplementary Aids and Supports, the December 2015 IEP reads, “Student receives 87% of her education within the general education setting. She has one elective period each school day where she gains additional support from special education teachers.” It also includes supports similar to those included in previous IEPs, such as simplified test directions, preferential seating, and chunking of classwork and tests.
- The notes reflect that the Chartering District’s offer of FAPE was a self-contained class in an Office of Education program, and that the district of residence’s offer was either “RSP or an SDC setting based on her needs.” Finally, the notes reflect that the complainant stated she planned to enroll the Student in a specified school in the Student’s district of residence. The complainant signed the IEP. The meeting was attended by the Special Education Teacher, the General Education Teacher, the School’s Assistant Director of Student Services, the Psychologist, the Counselor, a representative of the SELPA, the complainant, and the Student. The notes reflect that the School had been consulting with a representative of the Student’s district of residence, who was unable to attend.
- A January XX, 2015 handwritten letter entitled “Letter of Cease and Desist” addressed to the School from the complainant states that the complainant wanted the Student to “stay put” at the School, and that she would not withdraw her until she identified a suitable alternative school. According to both the Complainant and the Chartering District’s Executive Director, the School complied with this request.
- In a January 1XX, 2016 email to a representative of the SELPA, the Chartering District’s Executive Director requested a meeting to discuss the potential of the Chartering District filing a due process case regarding the Student’s placement. The email states that the Executive Director was attempting to convene a meeting with the complainant and wanted a representative of the SELPA to attend.

- According to Chartering District documents, the complainant withdrew the Student from the School on January XX and enrolled her in a school in her district of residence. According to her current IEP, provided by the complainant, she receives specialized academic instruction in four periods daily, and is otherwise in the general education setting. The complainant told OCR the Student did well in her new school; her May 2016 progress report showed she was passing all of her classes and had a 2.8 grade point average.
- The notes from the January, October, and December 2015 IEP meetings state that the complainant was given a copy of “procedural rights,” and provided an opportunity to review it and ask questions. The Notice of Procedural Safeguards provided by the School includes notice of the ability to request an impartial due process hearing and associated rights. The complainant acknowledged with her initials on each of the IEPs that she received a copy of the procedural safeguards.

Legal Standard

At 34 C.F.R. §104.33, the Section 504 regulations 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 §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an 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) 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 §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. Section 104.35(c) of the regulations requires that 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. Schools 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. 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.

Allegation One: Whether the School failed to provide the Student with a FAPE when it changed her placement without following adequate evaluation and placement procedures and failed to provide the complainant with notice that she could appeal the change.

Analysis

The Student's IEP team determined at its December 2015 meeting that the Student's placement at the School – special education provided through support in the general education classroom with additional pull-out – was not providing her with FAPE; it concluded that the Student would be better served in a self-contained class at a School within the SELPA. Before reaching this conclusion, the IEP team conducted a comprehensive assessment of the Student that was discussed at the IEP meeting. Attending the meeting were individuals knowledgeable about the Student, the placement options, and the assessment data. There was no evidence that the IEP meeting was not properly convened or that appropriate procedures were not followed. Further, the School regularly provided the complainant with written notice of procedural safeguards, including the ability to request a due process hearing regarding the IEP team's decisions regarding placement, and associated rights. While the complainant disagreed with the IEP team's decision regarding the Student's placement, OCR does not typically make determinations about the appropriateness of a particular educational decision for a specific child if proper evaluation, placement, and due process procedures have been followed. Accordingly, OCR found the School in compliance with Section 504 and Title II and their regulations with respect to this allegation.

Allegation Two: Whether the School failed to provide the Student with a FAPE by limiting the special education and related aids and services available to her based on unwritten School policy rather than an individualized determination.

Analysis

Based on the evidence gathered in OCR's preliminary investigation, including statements in the Student's IEP, OCR was concerned that the School determined the special education and related aids and services available to the Student, and perhaps other students with disabilities, according not to their individual needs, but rather to a policy of providing educational services through a single model, specifically special education support in the general education classroom. However, there was also counter evidence suggesting the School made a range of services available to the Student and other students with disabilities, at least during the time period reviewed by OCR. The School acknowledged

not adequately documenting the services determined appropriate by students' IEP teams, and including language in IEP meeting notes suggesting that only certain placements were available.

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a school expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation of Allegation Two, the School entered into the attached agreement to resolve the allegations in the complaint. The agreement requires the School to, in summary: designate a Coordinator of Services for Students with Disabilities and clearly define her responsibilities; adopt a FAPE Policy and Procedure that specifically addresses the School's legal obligation to provide the continuum of modifications, supplementary aids and services in the regular education program, and special education services, if necessary for FAPE; notify all members of the school community of the Policy and Procedure and identity and contact information for the Coordinator; provide FAPE training to administrators, teachers, and other staff with responsibility for implementing IEPs and Section 504 plans at the School; provide written notification to parents/guardians of all students currently attending the School with information about its FAPE obligations; and offer to convene an IEP or Section 504 meeting for all students with IEPs/504 Plans to determine whether the student requires modifications, supplementary aids and services in the regular education program, or special education services not currently included in the student's plan.

Because the School voluntarily resolved this allegation, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Section 504 and Title II. OCR will monitor the School's implementation of the agreement.

OCR is closing this complaint as of the date of this letter, and notifying the complainant simultaneously. 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. The complainant may have the right to file a private suit whether or not OCR finds a violation.

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 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; in particular, OCR appreciates the efforts of Nelda Colvin, Director of Special Education. If you have any questions about this letter, please contact OCR attorney Suzanne Taylor at 415-486-5561 or suzanne.taylor@ed.gov.

Sincerely,

/S/

Anamaria Loya
Acting Chief Attorney

Enclosure

cc: Nelda Colvin, Director of Special Education