



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

May 11, 2017

Dr. Rubin Zepeda II
Superintendent
Keppel Union School District
34004 128th Street East – P.O. Box 186
Pearblossom, California 93553

(In reply, please refer to Docket # 09-17-1190.)

Dear Superintendent Zepeda:

On January 5, 2017, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint against Keppel Union Elementary School District (District). The Complainant¹ alleged discrimination on the basis of disability. OCR opened the following allegations² for investigation:

- (1) The District failed to provide the Student with a free, appropriate public education (FAPE) when they did not follow adequate procedures for evaluation and placement of the Student, despite the Complainant's repeated requests for an assessment;
- (2) The District has not implemented procedural safeguards in accordance with Section 504; and
- (3) The District has not designated and made available information regarding its Section 504 Compliance Coordinator.

OCR investigated the complaint 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 District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the regulations.

To investigate this complaint, OCR spoke with the Complainant and District representatives, and reviewed documentation provided by the District. The facts gathered, the applicable legal standards, and the reasons for our determinations are summarized below.

¹ OCR informed the District of the identities of the Complainant and Student in our letter notifying it of the complaint. We are withholding them here to protect their privacy.

² OCR did not initially open Allegations 2 and 3. OCR expanded the scope of its investigation in light of preliminary evidence provided by the District.

- The Student is in 5th grade and attends a school in the District. The Complainant told OCR that starting in the 3rd grade, she communicated with the Student's teacher, the principal and front office staff that the Student had special needs and needed additional support.
- The District provided documentation that confirmed that the Complainant met the Student's 4th grade teacher (Teacher) on April XX, 2016, to discuss the Complainant's concerns about the Student. The concerns discussed included personal care issues, ADHD tendencies, and Math. The Teacher completed a referral for a Student Success Team Meeting (SST Meeting) on the same day, however, the SST Meeting was postponed until 5th grade as the school year was coming to a close.
- An SST Meeting was held on December X, 2016, in which pre-SST interventions were discussed. The notes state that the Student would complete work with continual prompting, but rarely on her own, including problems completed in class, step-by-step, and written on the board. The notes also include statements about the Student having multiple absences that affect her ability to complete math because she lacks prior knowledge due to missed instructional time.
- On January X, 2017, the Complainant contacted the District's Categorical Program Specialist (Program Specialist) to discuss that the School was not addressing the Student's needs, although she had raised the issue with the School repeatedly. The Complainant also notified the Program Specialist that the Student had recently been diagnosed with Autism.
- On March 2, 2017, the District provided OCR documentation relevant to the investigation, which included all of the District's Section 504 materials. These materials consisted of two PowerPoints titled "504 Forms" and "Supplemental 504 Forms." The forms covered issues related to the District's FAPE obligations under Section 504, i.e., assessment, evaluation, accommodations plan, the need to provide parent's rights, manifestation determinations, and behavior intervention plans.
- On March 16, 2016, OCR spoke with the Program Specialist. The Program Specialist stated that these two PowerPoints were the only Section 504 policies and procedures adopted by the District, and that the District's Director of Support Services is the District's Section 504 Compliance Coordinator. The Program Specialist also stated that the District's Special Education Local Plan Area (SELPA) provided the procedural safeguards for the District regarding Section 504.
- OCR reviewed the District's SELPA documents, and the procedural safeguards described apply only to students eligible for special education under the Individuals with Disabilities Educational Act (IDEA), not Section 504.

- On March 2, 2017, the Program Specialist notified OCR that an additional SST Meeting had taken place. The Complainant and Director of Support Services attended the meeting, and the Complainant was provided with procedural safeguards under IDEA.

Allegation 1: The District failed to provide the Student with a free, appropriate public education (FAPE) when they did not follow adequate procedures for evaluation and placement of the Student, despite the Complainant's repeated requests for an assessment

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 §§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) 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. 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.

In this case, the District received notice that the Student may be a student with disabilities eligible for services under Section 504 on April XX, 2016, if not earlier when the Complainant claims that she requested additional support while the Student was in the 3rd grade. Instead of making a referral for evaluation, the Complainant was offered an SST Meeting to discuss possible interventions to support the Student. The SST Meeting was delayed until December X, 2016, over seven months after the District was put on notice about the Student's needs. Additionally, instead of a group of knowledgeable persons making a determination about whether the Student should be evaluated, the decision to pursue an SST Meeting was made by the Student's Teacher.

Based on a preponderance of the evidence, OCR determined that the District failed to provide the Student with a FAPE when it did not follow adequate procedures for evaluation and placement of the Student.

Allegation 2: The District has not implemented procedural safeguards in accordance with Section 504

The Section 504 regulations, at 34 C.F.R. §104.36, 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. As described above, in the course of the investigation, OCR discovered that the District did not have procedural safeguards that apply Section 504.

Therefore, based on a preponderance of the evidence, OCR determined that the District had not implemented procedural safeguards in accordance with Section 504.

Allegation 3: The District has not designated and made available information regarding its Section 504 Compliance Coordinator

The Section 504 regulations, at 34 C.F.R. §104.7(a), require a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504. The Title II regulations, at 28 C.F.R. §35.107(a), contain a similar requirement for public entities that employ 50 or more persons to designate a compliance coordinator. The public entity shall make available to all interested persons the name, office address, and telephone number of the employee(s) designated as the compliance coordinator.

In this case, the District has named the Director of Support Services at its compliance coordinator. However, the documentation the District provided in to OCR's data request did not provide this information. Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. The District in this case expressed an interest in resolving the complaint to resolve OCR's concerns regarding whether the Section 504 compliance officer's information has been made available to all interested persons. In order to complete the investigation, it would be necessary to interview District staff about whether requests for the Section 504 compliance officer have been made and how the District responded to the requests.

On May 10, 2017, the District agreed to implement corrective actions and signed an agreement with OCR. When fully implemented, the resolution agreement is intended to

address all of OCR's compliance concerns in this investigation. OCR will monitor the District's implementation of the agreement.

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.

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

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.

If you have any questions please contact Alvaro Soria at (415) 486-5580 or alvaro.soria@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure