



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

April 20, 2020

SENT VIA ELECTRONIC MAIL

Yvette Irving
Superintendent
Gonzales Unified School District
600 Elko Street
P.O. Box G
Gonzales, CA 93926
XXXXXXXX@gonzales.k12.ca.us

(In reply, please refer to case no. 09-19-1397.)

Dear Superintendent Irving:

This letter is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Gonzales Unified School District (District). The Complainant alleged that the District discriminated against the Student based on disability.¹ Specifically, the Complainant alleged that the District denied the Student a free appropriate public education (FAPE) by failing to evaluate the Student in a timely manner, and disciplined the Student without adequate evaluation and placement procedures.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, the District is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District and the Complainant. OCR also interviewed the Complainant and the Student. Based on the facts collected to date, OCR identified a concern that the Student's Section 504 evaluation may not have been conducted in a timely manner. During the investigation, the District informed OCR that it would like to resolve OCR's concern through a Resolution Agreement pursuant to

¹ OCR notified the District of the Complainant and Student's identities when the investigation began. We are withholding their names from this letter to protect their privacy.

section 302 of OCR's Case Processing Manual (CPM). The applicable legal standards, factual findings to date, and resolution of this matter are summarized below.

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. 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.

Background

The Student transferred into the Gonzalez Unified School District at the start of the 2018-19 school year as a XXX grader. In October 2018, the Complainant notified the District that the Student had previously received mental health services at a previous school district as a result of attempted self-harm from bullying.

In a letter dated January X, 2019 the Complainant contacted the District, requesting a 504 evaluation. This evaluation would occur on June XX, 2019.

Student was disciplined on 3 separate occasions during the 2018-2019 school year.

Facts to Date

The Complainant alleges that the District failed to provide FAPE when it denied the Student a 504 evaluation, after she had requested one for suspected depression and anxiety.

Prior to the 2018 school year, Student had not shown any signs of a potential or suspected disability.

According to the Complainant, she first learned that the Student was self-harming sometime in January or February of 2018 during a call with a counselor (Counselor) from the school district attended by the Student at that time (prior district). The Counselor claimed in this call that such behavior was "pretty common" and was not a reason to worry.

According to the Complainant, the Student again began exhibiting signs of self-harm in April 2018. This was noted by a counselor in the prior district.

The Complainant told OCR that on May XX, 2018, the Student was XXXXXXXXXXXX XX XXX XXXXXXXXX for self-harm. Shortly thereafter on May XX, 2018 she began counseling sessions through a county behavioral health provider (County) while continuing to attend the prior district.

The Student then enrolled in a middle school in the District as of August XX, 2018. The County services were discontinued, due to the Student's transfer from the prior district into the District.

The Complainant told OCR in an interview that she first informed the School Principal in August 2018 (date unspecified) that the Student had received counseling services at the prior district and that she would also like these services to continue in the District. In the meeting, the principal said he would refer her to behavior therapy.

The Complainant contacted a program director (Director) for the County, in an attempt to resume services, on September XX, 2018. On October XX, 2018, the Student resumed health services through the County which is described in District documents as a "general education intervention".

On November X, 2018, the Student was disciplined for involvement in a "verbal fight" with classmate, classified as "disruption, defiance". The Student's parents were contacted. The Complainant told OCR in an interview that the November X, 2018, disciplinary action was for refusing to write a witness statement about that altercation, which involved two other students. On November XX, 2018, the Student was involved in "play fighting" with other students and received a 2-day suspension for "Disruption, Defiance and Harassment or Intimidation."

The Complainant formally requested a 504 assessment on January X, 2019. In a document dated January XX, 2019 titled "Explanation for Denied Request for Assessment", the section 504 evaluation request was formally denied. The District cited elementary school report cards, satisfactory scores on standardized tests and XXX grade teacher notes as reasoning for the denial. According to the Complainant, the Student earned a B, two Cs, two Ds and one F at the end of the Fall 2018 semester. The Student was referred to "Strengthening Families & Community or School based Mental Health Services" and also to a Student Study Team (SST) for additional support. According to the Complainant, a School psychologist XXXXXXXX XXXXXXXX XXXX on the Student in February 2019.

The SST met with the Complainant on February X, 2019. A new instructional intervention plan was created, calling for math tutoring, County counseling, equine therapy, and being permitted to yell at a staff member's coat rack as a stress reduction intervention.

After providing an SST meeting on February X, 2019, the District concluded that a 504 evaluation was not necessary, given the Student's academic performance. (Per Complainant's documentation, the Student at that point had a 3.8 GPA and had received satisfactory remarks from teachers and specialists.) According to the Student's Disciplinary Records, the Student

received a 2-day in-school suspension on February XX, 2019, for 3 offenses: “Disruption, Defiance”, “Property Damage”, and “Property Theft”. On March XX, 2019, the Student was involved in a fight and eloped from school. The Student was suspended pending an expulsion review. According to the District’s documentation, this suspension lasted 17 days. On March XX, 2019, the Complainant requested and was granted revocation of district transfer in lieu of an expulsion hearing. On April X, 2019, the Complainant’s counsel sent a letter requesting evaluation for special education and to forego an expulsion hearing. The Complainant received email confirmation of the expulsion cancellation on April X, 2019. The Complainant also learned that the inter-district transfer had been revoked on April X.

The Complainant filed a California Department of Education (CDE) complaint on April XX, 2019. The CDE complaint alleged that the District failed to assess and evaluate the Student in a timely manner “when it refused to assess the Student in January of 2019 despite the Student’s history of receiving therapy services from the county health department and being bullied at a previous school district.” The CDE found the District out of compliance in their June XX, 2019 findings. The CDE stated in its findings letter that while the District eventually assessed the Student on June X, 2019 for an Individualized Education Program (IEP) “and determined the Student to be ineligible for special education, the District was aware of the Student’s potential suspected disability prior to May X, 2019, and failed to provide the parent with an assessment plan until after the parent requested an IEE [Independent Educational Evaluation] as a result of the District’s denial to assess.” Corrective actions consisted of training to be completed by November 2019.

The Complainant requested an IEE in April 2019 (the District and the Complainant dispute the exact date). On May X, 2019, the Student was re-enrolled in the District in independent study for the remainder of school year.

The Complainant stated that an IEP evaluation was held on June X. The IEP team determined that the Student was not qualified for special education, and that 504 eligibility should be considered.

The Complainant told OCR that a 504 Meeting was conducted on June XX, 2019, at which the District discussed the Student’s grades. The School recommended modifications to the Student’s learning plan, giving her extra time because her major depressive disorders had a negative effect on her ability to concentrate. Additionally, the Student was permitted: time to get up and have space whenever she felt frustration (3-5 minutes stretch in classroom); Color-coded cards in the corner of her desk for requests of assistance from teacher; and a stretch ball for distraction or anxiety. The Student was to meet with the County, when necessary. The Complainant eventually signed off on this plan on July X, 2019. A 504 plan was developed and was set to be implemented at the school of Complainant’s choosing.

According to the Student’s disciplinary record, since enrollment in the District, the Student has been suspended on three different occasions from November XX to December X, 2018, March X to March X, 2019, March XX to April X, 2019, for a combined total of 21 days since the start of the spring 2018 semester.

Resolution Agreement Reached During Investigation

The facts gathered by OCR raise concerns that the District had notice as early as October 2018 that the Student may have been an individual with a disability. Despite this information, the District did not begin the evaluation process for the Student until the following June of 2019. The facts gathered thus far indicate that the delay in starting the evaluation process may have resulted in denial of FAPE for the Student. The information gathered so far indicates that the District had notice that the Student struggled academically and behaviorally, however, there was a significant delay in evaluating the Student to determine whether she was receiving the appropriate services to address her individual needs. Based on the information gathered, OCR also has concerns that with regard to the discipline of the Student, the District may have disciplined the Student for behavior that was a manifestation of her disability and may have done so without fully assessing the Student.

Prior to completing this investigation, the District informed OCR that it was interested in resolving the issues raised and OCR agreed that it was appropriate to do so. OCR determined that the steps the District agreed to take in the attached Resolution Agreement will resolve the allegation under investigation. Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with its terms. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

Conclusion

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, retaliate, 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.

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

OCR thanks Roxana Khan for her assistance during the resolution of this complaint. If you have any questions about the letter, please feel free to contact the case resolution team.

Sincerely,

/s/

James Wood
Team Leader

cc: Roxana Khan