



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 18, 2022

VIA ELECTRONIC MAIL

Ron Carruth
Superintendent
El Dorado Union High School District
4675 Missouri Flat Road
Placerville, CA 95667
supt@eduhd.k12.ca.us

Re: OCR Complaint No. 09-22-1192

Dear Superintendent Carruth:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against the El Dorado Union High School District (District). The Complainant alleged that the District discriminated against the Student on the basis of disability.¹ Specifically, OCR began an investigation of the issue of whether the District denied the Student a free, appropriate public education (FAPE) by failing to follow adequate procedures for evaluation and placement of the Student, notably by not including information from a variety of sources in interpreting evaluation data and in making placement decisions.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a public entity and a recipient of Federal financial assistance from the Department, the District is subject to Section 504 and Title II.

Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 110 that incorporates section 302 of OCR's *Case Processing Manual*, and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

¹ OCR previously provided the District with the identity of the Complainant and Student. We are withholding their names from this letter to protect their personal privacy.

Issue 1: Whether the District denied the Student a FAPE by failing to follow adequate procedures for evaluation and placement of the Student, notably by not including information from a variety of sources in interpreting evaluation data and in making placement decisions.

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 students without disabilities 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(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. 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.

Facts

The following facts are relevant to OCR's analysis:

The Student is a XX grader with an IEP who receives services from the District at a District high school (School).

The Complainant stated to OCR that at some point since approximately December 2021, the Student's treating XXXXXX diagnosed the Student with a new condition called XXXXXX disorder. She stated that while the District was aware of his other medical conditions and diagnoses when developing his placement, it did not contact the Student's treating XXXXXX prior to holding an IEP team meeting on March X, 2022.

The Complainant signed an authorization on February XX, 2022 for the District to obtain information from the Student's treating XXXXXX. Notes from the March X, 2022 IEP team meeting indicated that while both the School psychologist and a mental health

therapist contracted with the District to work with the Student reported during the IEP team meeting that they had made multiple attempts to contact the XXXXXX, they had not been successful.

Analysis and Conclusions

The information gathered by OCR showed that the Student's IEP team was aware of information about a new diagnosis from the Student's treating XXXXXX, but did not have that information available between February XX, 2022—the date the Complainant signed the authorization for the release of that information—and the March X, 2022 IEP team meeting at which discussion about an appropriate placement took place. This gave rise to OCR's concern that the March X, 2022 IEP team did not have information from a variety of sources for that IEP team meeting.

In order to determine whether the District followed adequate procedures for evaluation and placement of the Student at the March X, 2022 IEP team meeting, notably by not including information from a variety of sources in interpreting evaluation data and in making placement decisions in the form of the Student's treating XXXXXX, OCR would need to gather further information from the District, including interviews with employees. However, prior to the conclusion of OCR's investigation, the District indicated its interest in voluntary resolution regarding the issue, and OCR determined that such a resolution would be appropriate to resolve the issue.

To address the complaint allegation and OCR's concerns identified in the investigation, the District, without admitting to any violation of law, entered into the enclosed resolution agreement. Under the resolution agreement, the District will make all reasonable efforts to obtain the treating XXXXXX information, and hold an IEP team meeting within 30 days of the new school year, make a placement decision, and provide the Complainant notice of procedural safeguards.

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 the complaint allegation. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the 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, discriminate, or otherwise retaliate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual subjected to such retaliatory treatment may file another complaint alleging retaliation.

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, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact David Christensen at David.Christensen@ed.gov.

Sincerely,

/s/

Kana Yang
Team Leader

cc: Heather Edwards, counsel for the District (*via electronic copy only*)

Enclosure