



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

May 23, 2014

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

Dr. Elaine Beraza
Superintendent
Yakima School District No. 7
104 North 4th Avenue
Yakima, Washington 98902

Re: Yakima School District No. 7
OCR Reference No. 10111509

Dear Superintendent Beraza:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Yakima School District No. 7 (the district). The complaint alleged that the district discriminated against a student, on the basis of disability, when the district failed to implement the student's Section 504/Individual Health Plan at summer band camp during the week of August 8-12, 2011.

OCR enforces section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990, and their implementing regulations. These laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district receives federal financial assistance from this Department and is a public entity and is therefore subject to these regulations.

The issue OCR investigated was whether the district failed to provide the student with a free appropriate public education, by failing to implement her Section 504 and Individual Health Plan at summer band camp during the week of August 8-12, 2011, in violation of Section 504 at 34 CFR 104.33 and Title II at 28 CFR 35.130.

OCR determined that the evidence supported a conclusion that the district failed to comply with Section 504 and Title II with regard to the issue investigated. OCR's findings of fact and conclusion, set forth below, and are based upon information and documents provided by the parent and the district. The district has agreed to take the actions set forth in the enclosed Settlement Agreement which, when fully implemented, will resolve the compliance concerns identified in the investigation.

Findings of Fact

1. The student attended the district's Eisenhower High School during the 2010-2011 and 2011-2012 school years. During both years, the district provided the student with a

Section 504 Accommodation Plan, Individual Health Plan (IHP), Seizure Care Plan (SCP), and Emergency Care Plan (ECP) to address the student's disability-related educational needs with respect to her epilepsy.

2. The student was a member of the Eisenhower High School band. As a band member, the student participated in summer band camp and other activities that occurred outside the school building and sometimes required overnight stays.
3. The student's March 27, 2010, Section 504 Accommodation Plan provided a plan for the student's care when she was out of the school building or on extended field trips. The Section 504 plan states: "Outside of the school day or travel for concerts, contests, etc., if parents are able to attend, that is sufficient supervision. If they are unable to attend, a Para/staff will need to be assigned for supervision. Need 48 hours notice to school nurse prior to field trip and extra-curricular activities that parents cannot attend so we can provide supervision (need to have availability of 911 response). Follow the operational procedure 2320 for after hour or summer field trips."
4. The school nurse is involved in writing IHPs and ECPs for students with life threatening health conditions. The student's IHP, dated May 2, 2011, states the following:

Field Trips:

- Notify parent prior to trip.
- Follow specified plan developed for field trip "Teacher to carry a copy of care plan and record any seizure activity. For trips out of the 15 min response for 911 services, or city limits, special arrangements will need to be made if parent cannot accompany [the student]. Notify the school nurse according to field trip policy, so arrangements can be made."

Schedule after-school activities:

- List: "Parent/guardian will notify the school nurse before any planned school sponsored after-school activities including sports, so staff can be trained and needed medication or treatments can be arranged."

Special Instructions: "Special arrangements need to be made for any field trip out of the normal 911 response time. Follow district policy for field trips."

5. The student's SCP, dated April 12, 2011, lists parent emergency contact information, medical history, what seizures look like for the student, what the student needs during and after a seizure, a list of daily and emergency medications for the student, and describes what constitutes a seizure emergency and actions to take in a seizure emergency.
6. The ECP, developed for the 2011-2012 school year, indicates medical information about the student including doctors, medications, descriptions of types of seizures she may have, actions to be taken if seizures are observed, and staff members trained to initiate appropriate procedures in an emergency.

7. The district's operational procedure 2320 for field trips provides for the following process:
 - that a list of participants be provided to the school nurse in advance;
 - that forms for funding, transportation and attendance be submitted;
 - if a student's health condition requires a nurse in attendance during a field trip, an accompanying nurse will be arranged with the assistance of the school's nurse;
 - the coordinating staff member is to contact the building school nurse 10 to 20 days prior to the scheduled trip to review any special medication or other personal health care needs;
 - students who will be taking medication during a field trip must have properly-completed district medication forms on file.
8. OCR interviewed two school nurses assigned to the high school, one for the 2010-2011 school year and the other for the 2011-2012 school year. Both nurses are familiar with the student's plans and have trained teachers and staff about the student's ECPs. The nurses stated that the district relies on local 911 response units to administer the student's medicine if needed (when a seizure continues for more than 5 minutes or 3 seizures occur within a 15-minute period). The school nurse stated that she researched 911 response times and that "911 in Yakima is very fast—it's within minutes" and less than the 15 minutes required by the student's plans. The vice principal stated that the school calls 911 for any seizure during the day.
9. The vice principal, band director, school nurse, and counselor met in the spring 2011 to discuss the student's medical needs and to revise the student's IHP to cover recent changes in medication. Summer band camp was also discussed and the decision was made to hold summer band camp at Wilson Middle School, a district school located across the street from Eisenhower High School. According to the vice principal and band director, the IHP changes and band camp information were shared with the parents. The parents were informed that since band camp was in Yakima, the 911 response time was local and the student's health plans would be in effect as during a normal school day and no nurse would be required to accompany the student at camp.
10. The parent states that when dropping off the student on the first day of band camp, she inquired about a nurse or medical personnel being present during band camp and was told that since camp is located in Yakima this year and the 911 response time is short that the school district did not feel the need to hire any medical staff. The parent says she then asked who would be monitoring the student during the evening and who would distribute her medications during the day. The parent states she was directed to the band director with her questions, who told her that he would need to consult with his boss, the vice principal. The parent states the vice principal told her he would get back to her and she next received a telephone call from the vice principal stating that the student could go home each night and be at band camp during the day, followed by another call telling the parents to pick up the student.
11. The parent alleges that the second day of band camp she called the band teacher and asked if another student or a chaperone "would be able to alert staff if [the student] were to stay the evenings and had a medical emergency." She states she told the band director that she understood that no nurse or medical staff was present and that she was comfortable with the

911 response time. She states the band director again told her that he needed to talk to his boss, the vice principal. The parent states the vice principal called her that afternoon and told her that

another student or a chaperone cannot be responsible for [the student] and that if either of the parents wanted to stay the night at band camp so [the student] could stay, they were welcome.

12. Band camp was held the week of August 8-12, 2011. The vice principal and band director stated that on the first day of camp, the parents requested to know who the nurse was who would monitor the student. When informed that there was no nurse because the camp was local and 911 response time was adequate, the parents requested that another parent or student be assigned to monitor the student at night. The vice principal stated that he informed the parents that other parents and students could not be put in that position because they were not trained to care for or recognize seizure activity. The vice principal did not inform the parents that a trained staff member and trained adult chaperones would be present overnight in the gym with the student.
13. The band director stated that the student's plans required that if the student traveled outside a 15 minute 911 response area, and the parents were not present, the district was to arrange for a nurse to accompany the student. Where the activity occurs within a 15 minute 911 response area, then the plans provide for the band director or other staff member to recognize the seizure and call 911 for assistance.
14. The student attended camp on August 8, 9, 11 and 12, 2011. The student did not attend camp on August 10. According to the parent, the student stayed overnight on the last night of camp, August 11, but not the first 3 nights.
15. The vice principal and band director each denied that they told the parents that a parent was required to stay overnight, or that the student could not stay overnight without a parent present. The vice principal stated that in response to the parent's request as to who was assigned to monitor the student, he informed her he could not put other students or parents in that position, and that if they had issues with that arrangement or there was a safety concern, he suggested that they could have the student stay at home, or they could stay overnight or split up staying overnight with her. He communicated that the 911 response time was local and it would be treated as a normal school day.
16. The band assistant/color guard coach stated that she stayed overnight during band camp, and was present in the gym the night the student stayed over. The assistant stated that she was familiar with the student's health care and emergency plans, and was trained by the school nurse along with the band director and other staff members in how to recognize symptoms and respond to a seizure. The assistant stated that she had observed the student having a seizure during a previous camp and that she would recognize a seizure by the student's body tensing and the sounds she makes (whining/moaning). The assistant stated that she reviewed the student's care plans with the band director and three female band chaperones (who were also staying overnight) prior to camp.
17. The band assistant told OCR that there were several parent volunteers spending the night, more than 15 people. She states that at least 3 of them were medically trained. She states that the district did not have anyone specifically assigned to monitor the student throughout the night,

but that all of the female adults were sleeping in the girls' gym with the student. She stated that she is a light sleeper and would have been aware of any seizure activity.

18. A parent chaperone also provided information to OCR that she stayed overnight in the gym each night of band camp and was familiar with the student's health plans. She stated that she had discussed the student's condition with the parent and that she would recognize the symptoms of the student having a seizure. The chaperone stated that she knew how to keep the student safe during a seizure.

Analysis and Conclusion

OCR investigated whether the district failed to provide the student with a free appropriate public education, by failing to implement the student's Section 504/Individual Health Plan at summer band camp during the week of August 8-12, 2011.

The regulation implementing Section 504 at 34 CFR 104.33(a), requires that recipients that operate a public elementary or secondary education program must provide a free appropriate public education to each qualified person with a disability in the district's jurisdiction. Section 504 at 34 CFR 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met.

In this case, OCR found that the student was a qualified person with a disability and was receiving services under a Section 504 Accommodation Plan, Individual Health Plan, Seizure Care Plan, and Emergency Care Plan to meet her disability-related educational needs. The student's March 2010 Section 504 plan stated that, for events outside of the school day, if parents were unable to attend, a para/staff will need to be assigned for supervision. The student's care plans specified that if the student traveled outside a 15 minute 911 response area, and the parents were not present, the district was to arrange for a nurse to accompany the student. Where the activity took place within a 15 minute 911 response area, no nurse would be required to accompany the student and the plans allowed for a trained staff member to initiate appropriate actions.

The evidence from OCR's investigation established that the August 2011 band camp was held at a district middle school, which is located within a 15 minute 911 response area. The band director, band assistant, and at least one other adult chaperone were familiar with how to recognize and respond to seizure activity, including calling 911.

The evidence showed, however, that when the parents inquired about whether a nurse would be present during band camp, she was informed that a nurse would not be present. The assistant principal did not inform the parent that trained staff or other adult chaperones would be present in the gym overnight to recognize seizure activity and to call 911. Based on this lack of assurance that the plan would be implemented, the parents determined that it would be unsafe to leave the student unmonitored overnight and did not allow the student to participate in the overnight activity. Because the district failed to communicate with the parent about how the plan would be implemented with respect to the overnight camp when the parent requested that information, the student was prevented from full participation in the overnight activity. By failing to communicate with the parent regarding

the implementation of the student’s plans and thereby preventing the student from participating in a substantial part of the activity, the district did not provide the student with a free appropriate public education as required by Section 504 and Title II and was therefore not in compliance with those laws.

The district has agreed to take the actions set forth in the enclosed Settlement Agreement (agreement) which, when fully implemented, will resolve the issue raised by the complaint. OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied.

This letter sets forth OCR’s determination in an individual OCR case and should not be interpreted to address the district’s compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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.

This concludes OCR’s investigation of the complaint. 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 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, 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.

My thanks to you and to district employees for the cooperation extended to OCR during the investigation of this complaint. OCR is closing this complaint as of the date of this letter. If you have any questions, please contact Catherine Fawley, Attorney, at (206) 607-1609, or by e-mail at catherine.fawley@ed.gov.

Sincerely,

Sukien Luu
Supervisory Attorney

cc: Honorable Randy Dorn, Superintendent of Public Instruction