



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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Dr. Larry Nyland
Superintendent
Seattle School District No. 1
P.O. Box 34165
Seattle, Washington 98124-1165

Re: Seattle School District No. 1
OCR Reference No. 10121283

Dear Superintendent Nyland:

The Office for Civil Rights in the U.S. Department of Education (OCR) has completed its investigation of the above-referenced complaint filed against the Seattle School District on August 29, 2012. The complaint alleged that the district discriminated against a sixth grade XXXXXX School student with profound bilateral hearing loss, on the basis of disability, and retaliated against him. Specifically, it is alleged that the district:

- discriminated against the student by requiring him to use a regular telephone with assistance;
- discriminated against the student by failing to act on his parent's request for an evaluation of the student's need for assistive technology to access his education; and
- retaliated against the student because of his parent's advocacy for his disability-related needs by failing to act on his parent's request for an evaluation of the student's need for assistive technology to access his education.

OCR conducted its investigation under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990 and those statutes' implementing regulations at 34 CFR Part 104 and 28 CFR Part 35. These federal civil rights laws prohibit discrimination based on disability by programs and activities that receive federal financial assistance and by public entities. The regulations that implement these laws also prohibit recipients of financial assistance from the U.S. Department of Education and public entities from intimidating, threatening, coercing, or

discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II or those statutes' implementing regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those regulations.

The issues OCR investigated were:

1. whether the district violated the Section 504 regulations at 34 CFR 104.4(b)(1)(ii) and (iii) and the Title II regulations at 28 CFR 35.160(b) by denying the student effective communications when, during the 2012-2013 school year, the student was denied access to an accessible telephone at school;
2. whether the district denied the student a free appropriate public education by failing to act on his parent's request for an evaluation of the student's need for assistive technology in violation of the Section 504 regulations at 34 CFR 104.33 and 104.35 and thereby discriminated against him in violation of the Title II regulation at 28 CFR 35.130(a); and
3. whether the district retaliated against the student in violation of the Section 504 regulation at 34 CFR 104.61 and the Title II regulation at 28 CFR 35.134 because of his parent's advocacy for his disability-related needs when it failed to act on his parent's request for an evaluation of the student's need for assistive technology.

Through its investigation, OCR found sufficient evidence to support a conclusion that the district failed to timely act on the parent's request for an evaluation of the student's need for assistive technology with respect to issue No. 2. OCR found insufficient evidence to conclude that the district retaliated against the student because of his parent's advocacy for his disability-related needs with respect to issue No. 3. With respect to issue No. 1, prior to OCR's concluding its investigation, the district requested a voluntary resolution agreement. To address the compliance concern identified by OCR in issue No. 2, and pursuant to the voluntary resolution of issue No. 1, the district has agreed to take the actions specified in the enclosed resolution agreement.

OCR's findings of fact and analyses and conclusions set forth below are based upon information and documents provided by the student's mother and by the district, including interviews with the student's mother, the Denny International Middle School principal and special education department head, the student's sixth grade special education teacher, the special education supervisor for the West Seattle region K-12, the special education supervisor for the Southeast region K-12, the district's interim executive director of special education, and the district's Section 504 coordinator.

Findings of Fact

1. During the 2012-2013 school year, the student was in the sixth grade at the district's XXXXXXXXX School.
2. The student has profound, bilateral, sensorineural hearing loss for which he has bilateral cochlear implants. The implants are surgically implanted electronic devices that provide a sense of sound to a person who is profoundly deaf or severely hard of hearing. Without cochlear implants, the student cannot hear.

Issue No. 1: Access to School Telephone

3. The student's mother told OCR that because there is no telephone accessible to a deaf or hard of hearing person at XXXXXXXXX School, if the student wants to call her from school he is required by the district to ask someone else to make the call from the school office, where there is no privacy, and that person then relays the conversation between the student and his mother. When asked how often the student needed to make a call from the school, the student's mother stated, "For example, he had to use it once last week and will probably need to use it today...."
4. A TTY (or text telephone) is a device that allows TTY users to type messages to one another instead of talking and listening. A TDD (or telecommunication device for the deaf) is a different name for a TTY. A CapTel (or captioned telephone) displays what callers are saying and users can both read the captions in the display and listen to callers.
5. XXXXXXX School does not have an accessible telephone, such as a TTY or CapTel, for the use of deaf or hard of hearing students, employees, or visitors. The school makes the regular telephone in the school office available for a deaf or hard of hearing person who must ask staff members to help him or her communicate over the telephone.
6. The student's mother told OCR that during an elementary school student intervention team (SIT) meeting on April 12, 2012, the team discussed the student's transition from elementary to middle school. The student's mother said she informed the SIT that she had a caption phone that the district could use but that the SIT did not respond to that suggestion. The SIT raised the possibility of the student using a laptop to communicate with the student's mother.

7. In an e-mail on June 29, 2012, the district's Section 504 Coordinator told the student's mother that the district's telecommunications staff had suggested Skype as an option for the student to communicate with his mother from school. The student's mother responded that, since the student would not have access to clear sound using Skype, he would not be able to understand what was being said, which was why captioning was the most appropriate solution.
8. On August 8, 2012, the student's mother said in an e-mail to the district's interim executive director of special education ("interim director") and the district's superintendent that she had offered to provide a CapTel to the school with hook-up, training, and captioning service, each of which would be cost-free for the district.
9. According to the student's mother, the technical requirements for a CapTel would include a separate analog telephone line and a separate internet connection at the school. The district's Section 504 coordinator stated in an e-mail to the student's mother on June 29, 2012, that it would be challenging to put in a separate telephone line because the district did not have a separate analog telephone line, the current telephone system wiring went through central wiring, and the district would have to have a separate telephone line installed for the CapTel along with an internet connection nearby.
10. On August 27, 2012, the interim director sent an e-mail to the student's mother stating that the district would not provide the CapTel for the student as it was not required for the student's educational progress and that the student would have telephone access with assistance as needed, as did any other student.
11. The Section 504 coordinator told OCR that the majority of students who are deaf or hard of hearing attend one of three schools in the district (TOPS kindergarten through eighth grade, Eckstein Middle School, and Roosevelt High School). She said that students who have cochlear implants and do not need sign language interpreters, the majority of whom function at the same level as other non-hearing impaired students, are spread across the district schools. According to the Section 504 coordinator, there are no buildings in the district that have an accessible telephone for deaf or hard of hearing students. She stated that most of the students have cell phones and can text or call between classes. She said that if any deaf or hard of hearing student needs to use a telephone, the process is to ask someone in the school office to make the call, not the student, but that each school may handle it differently.

12. The student's mother told OCR that hearing students who request to use the telephone in the school office are directed to the office telephone and make the call themselves without assistance from school personnel.
13. The student's mother provided OCR with examples of times when the student needed to call her because he had forgotten his lunch, would be staying late, or needed to be picked up earlier in the school day. The student's mother said that in these instances, the student had to either use his teacher's telephone and let the teacher relay the conversation or he had to go to the school office and have someone in the office make the call for him.
14. Prior to OCR's conducting interviews with the staff at the student's middle school, the district requested a voluntary resolution agreement on issue No. 1.

Issue No. 2: Assistive Technology Evaluation

15. The student's mother stated that she requested captioning from the district because the student needed captioning in the classroom or voice recognition so that he could have equal and appropriate access to information in his classes, including to class overviews and introductions, and teachers' expectations. She said that although the special education supervisor for the West Seattle region ("West Seattle supervisor") offered an assistive technology evaluation (ATE), she had not known that the ATE would not be done before school started or that the ATE would have to be done before the student would receive captioning.
16. A meeting was held at the student's elementary school on June 18, 2012, to evaluate the student's eligibility for an individualized education program (IEP). The meeting was attended by, among others, the student's mother, the district's audiologist, the school psychologist, and several elementary school teachers. The report from the evaluation concluded that the student was eligible for special education services based on his need for social and organizational skills. The report did not address the student's need for an ATE.
17. In a prior written notice (PWN) document dated June 22, 2012, about the district's proposal to develop an IEP for the student, the district stated that the student's mother had expressed concerns about her son's ability to follow what is spoken in the classroom in real time and that she had requested that the district initiate an ATE in fall 2012. The notice stated

that the student was recently evaluated due to parental concerns about the student's needs as a result of his deafness and move to middle school.

18. An initial IEP for the student dated June 22, 2012, stated that the audiologist reported that, with his cochlear implants, the student was able to have a conversation one-on-one when it is quiet and if he is close to the person speaking but, in the classroom, the student would be challenged to hear his teachers as well as his classmates. A section of the IEP stated that no needs had been identified for the student at that time in the area of assistive technology devices and services.
19. According to the West Seattle supervisor, the student's latest IEP, which was on-line, should have been reviewed by the IEP teacher where he would have learned in the PWN that the student's mother had requested an ATE. In the PWN, the student's IEP team from the elementary school recommended that the student's mother's request for an ATE be initiated in the fall and that the team "deemed it necessary" for the middle school IEP team to meet during the first 2 weeks of school to review the initial IEP and amend it as needed. Although the PWN rejected the mother's request that a teacher for the deaf be a consultant, the elementary school IEP team had not rejected the mother's request that an ATE be conducted.
20. The special education supervisor for the Southeast region K-12 ("Southeast supervisor") told OCR that a school has 35 days to conduct an evaluation and that the clock begins once the district has a signed consent form from the parent, though the 35-day requirement did not necessarily apply to ATE requests because they are more complex. She stated that all requests for ATEs are forwarded to the district's technology team.
21. During summer 2012, the student's mother contacted by e-mail (at least seven times) and telephone, various district employees, including the middle school's principal, assistant principal, and special education department head, and the district's interim director, Southeast supervisor, and West Seattle supervisor, about the scheduling of an ATE.
22. On August 8, 2012, the student's mother stated in an e-mail to the superintendent that, although she had requested an ATE, she had not been able to find out when, or with whom, the ATE was scheduled. The superintendent's office forwarded the mother's August 8 e-mail to the interim director for a response. The student's mother wrote directly to the interim director with essentially the same inquiry on August 21, 2012. The interim director responded to the student's mother in an e-mail dated

August 27, 2012, that the West Seattle supervisor would be coordinating the ATE.

23. On August 13, 2012, the student's mother sent an e-mail to the middle school's principal and special education department head and the district's audiologist asking when the ATE would be scheduled and emphasizing that the student should have equal access to the information given by teachers to students at the beginning of the school year.
24. On August 13, 2012, a coordinator for the Deaf and Hard of Hearing Services for the Washington Sensory Disabilities Service, a statewide program funded through the state education agency, sent an e-mail to the middle school's principal and special education department head and the district's audiologist stating that she had been contacted by the student's mother about the possibility of helping with an ATE and offering to assist the district.
25. After the middle school principal had forwarded the student's mother's August 13, 2012, e-mail to him, the West Seattle supervisor sent the principal an e-mail on August 20, 2012, stating that he would call the student's mother and "find out what she is asking for...." The principal replied the same day that the school would follow the supervisor's lead.
26. Sound Options is an organization that provides mediations to help educators and parents resolve conflict. Because the district had not acted on her request for an ATE, the student's mother contacted Sound Options in October 2012 to request mediation. The West Seattle supervisor declined the request to mediate with the student's mother and said that he would call an IEP meeting. During the e-mail exchanges between various district employees, the middle school principal responded to the West Seattle supervisor on October 30, 2012, saying that the West Seattle supervisor's plan to call an IEP meeting "sounds good."
27. On November 16, 2012, the student's mother sent an e-mail to the superintendent, the interim director, and the IEP teacher saying:

it is now mid-November, and there is no sign of the evaluation, nor the permission form (which, as I understand it gives the district another 25 days to begin said evaluation). I contacted Sound Options and requested mediation with [the West Seattle supervisor], who declined mediation and, according to the Sound Options person, instead said he was going to call another IEP meeting. That, too, still has not happened, even though it was several weeks ago. What is the delay

in obtaining the evaluation and the services?... Please note that no district person has responded to me as to when the evaluation was supposed to occur. Note also that the communication has been remarkably one-sided, with none of the requested information being given to me.

28. An e-mail dated November 16, 2012, from the superintendent to the Southeast supervisor requested that the student's mother be contacted to acknowledge receipt of her November 16 e-mail and that the supervisor inform the superintendent of the next steps the district would take to address the parent's concern. On November 19, 2012, the Southeast supervisor informed the interim director that she and the West Seattle supervisor would be contacting the student's mother that day to discuss her request for an ATE.
29. The district completed an ATE on January 7, 2012, some 7 months after the request of the student's mother for an ATE was documented in the PWN. The report of the ATE recommended that the student have a trial with TypeWell, a system for transcribing speech to text, and, if the trial were successful, the TypeWell be continued through the end of the school year.
30. According to Washington Administrative Code 392-172A-02015, the state's rule governing the availability of assistive technology, each school district must ensure that assistive technology devices or assistive technology services, or both, are made available to a student eligible for special education if required as part of the student's special education, related services, or supplementary aids and services. The rules define "assistive technology service" as any service that directly assists a student eligible for special education in the selection, acquisition, or use of an assistive technology device.

Issue No. 3: Retaliation

31. The student's mother asserted to OCR that the district's inaction on her request for an ATE was in retaliation for her advocacy on behalf of the student.
32. The district asserted to OCR that the delay in initiating the student's ATE was due to miscommunication between school staff and due to confusion about which district department was responsible for the evaluation. The district provided OCR with numerous e-mails among district employees and between those employees and the student's mother regarding her requests for an ATE. None of those e-mails demonstrate a

connection between the district's inaction and the advocacy of the student's mother.

33. OCR interviewed key district employees regarding the district's inaction on the student's mother's request for an ATE. Those employees included the special education teacher, the middle school's special education department head, the West Seattle supervisor, the Southeast supervisor, and the interim director. Each of them denied retaliating against the student by not acting on the mother's request for an ATE, because of her advocacy on behalf of the student.
34. After sending a number of e-mails and making phone calls to district staff requesting the ATE, the student's mother sent an e-mail to the superintendent on November 16, 2012. On November 20, 2012, the student's mother was notified by the West Seattle supervisor that her request was being initiated. The ATE was begun in December 2012 and was completed in January 2013.
35. The middle school's special education department head stated that she would like to see more parents like the student's mother advocating for their children.
36. OCR found no evidence that the district's failure to timely conduct the ATE was retaliatory because of the student's mother's activities protected by the civil rights laws.

Analyses and Conclusions

Because the district receives financial assistance from the U.S. Department of Education and is a public entity, it is subject to the requirements of Section 504 and Title II and those statutes' implementing regulations, several of which are implicated by the issues raised by the complaint.

Issue No. 1: Access to School Telephone

In providing any aid, benefit, or service, the Section 504 regulations at 34 CFR 104.4(b)(1)(ii) and (iii) prohibit recipients of financial assistance from this Department from, on the basis of disability, affording a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others; and from providing a qualified disabled person with an aid, benefit, or service that is not as effective as that provided to others. The Title II regulation at 28 CFR 35.160(b) requires a public entity to furnish appropriate auxiliary aids and services where necessary to afford an individual

with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the public entity. The Title II regulation recognizes that the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. The regulation requires that, in determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the request of the individual with a disability. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

The district does not have an accessible telephone for the use of deaf or hard of hearing students attending XXXXXX School, and instead makes a hearing telephone available for use with the assistance of school personnel. The student's mother requested from the district a CapTel that the student could use to contact her during the school day. She stated that the CapTel would afford the student the privacy and independence experienced by his hearing peers. In the investigation to date, OCR did not interview the middle school office staff to determine what process is used for students seeking to use the office telephone to contact a parent.

Prior to OCR's conducting interviews with the office staff at the student's middle school, the district requested a voluntary resolution agreement with regard to this issue.

Issue No. 2: Assistive Technology Evaluation

The Section 504 regulations at 34 CFR 104.33(a) and (b) require that a recipient of financial assistance from this Department that operates a public elementary or secondary education program or activity provide a free appropriate public education to each qualified disabled person within the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as the provision of regular or special education and related aids and services designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met. OCR interprets the Title II regulations at 28 CFR 35.130(a) to require public entities to provide a free appropriate public education at least to the same extent as that required by the Section 504 regulations. See 28 CFR 35.103(a) (requiring that the Title II regulations not be construed to apply a lesser standard than the standards applied under Section 504 regulations).

Moreover, the Section 504 regulation at 34 CFR 104.35(a) requires a recipient that operates a public elementary or secondary education program or activity to conduct an evaluation for any person, who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The preponderance of the evidence obtained through OCR's investigation established that the elementary school IEP team that met in June 2012 included in its written notification a statement to be read by the middle school IEP team that the student's mother had expressed concerns about the student's ability to follow in real time what was spoken in class and that she requested that an ATE be conducted. The elementary school IEP team went on to state that it "deemed it necessary" for the middle school IEP team to meet during the first 2 weeks of the school year and amend the student's IEP as necessary. Although the prior written notice declined one of the mother's requests—that a teacher of the deaf be present to act as a consultant, presumably to the middle school IEP team—the elementary school IEP team did not reject the student's mother's request for an ATE. The student's mother contacted numerous district leaders and staff members throughout the summer and fall of 2012 about scheduling the ATE. In those communications, the mother consistently expressed a need for the student to be assessed for his assistive technology needs.

Due to the district's delay in conducting the ATE, the student's mother requested to enter into mediation with the district near the end of October 2012, but the district declined to mediate her concern. In mid-November 2012, after she had again sent an e-mail to the district's superintendent, the West Seattle supervisor notified the student's mother the following week that the district would conduct an ATE. Almost halfway through the school year and 7 months after the mother's request was included in the prior written notice from the elementary school IEP team to the middle school IEP team, the district conducted the ATE. The report from the ATE dated January 7, 2013, recommended a captioning system for the student, at least on a trial basis.

OCR found sufficient evidence to establish that when the district failed to conduct the ATE between June and December 2012, the district failed to provide the student a free appropriate public education during the 2012-2013 school year, and concluded that the district violated the Section 504 regulations at 34 CFR 104.33 and 104.35 and thereby discriminated against him in violation of the Title II regulation at 28 CFR 35.130(a) with respect to issue No. 2.

Issue No. 3: Retaliation

The Section 504 and Title II regulations at 34 CFR 104.61 and 28 CFR 35.134 prohibit retaliatory acts against an individual for the purpose of interfering with any right or privilege protected by the Section 504 or Title II regulations.

Although the district did not act on the student's mother's request for an ATE for approximately 7 months, OCR found no evidence that the delay was because the district was taking an adverse action against the student because of his mother's advocacy.

Accordingly, because OCR found that the evidence is insufficient to establish that the district retaliated against the student because of his mother's advocacy, OCR concluded that the district did not retaliate against the student in violation of the Section 504 regulation at 34 CFR 104.61 or the Title II regulation at 28 CFR 35.134 with respect to issue No. 3.

The district has agreed to take the actions set forth in the enclosed resolution agreement, which, when fully implemented, will resolve the compliance concerns identified by OCR. OCR will monitor the district's implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by September 1, 2015.

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.

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 a 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.

Thank you for the assistance extended to OCR by the district during the investigation and resolution of this complaint. If you have any questions, please contact OCR attorney Catherine Fawley, by telephone at (206) 607-1609 or by e-mail at catherine.fawley@ed.gov.

Sincerely,

/ s /

Sukien Luu
Supervisory Attorney

Enclosure: Resolution Agreement

cc: Honorable Randy Dorn
Superintendent of Public Instruction