

March 16, 2017

Via U.S. Mail and E-Mail

Mr. Pat Skorkowsky
Superintendent
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89148

Re: Clark County School District
OCR Reference No. 10141360

Dear Superintendent Skorkowsky:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced disability discrimination complaint against the Clark County School District (the district). OCR investigated whether the district discriminated against an XXXXXXXX XXXXXX student (hereinafter, the student), when district staff withdrew the student from the district and terminated all of the student's regular and special education services.

OCR conducted its investigation under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). These laws prohibit disability discrimination in programs and activities receiving federal financial assistance from the Department and by public entities, respectively. Because the district is a recipient of federal financial assistance from this Department and is a public entity, the district is subject to the requirements of Section 504 and Title II.

We have determined that the findings in the investigation support a conclusion that the district failed to comply with Section 504 and Title II with respect to the issue investigated. Our findings and conclusions, set forth below, are based on a review and analysis of written information provided by the complainant, the student's parent and the district.

Findings of Fact

1. The student was enrolled at XXXXXXXXXXXX (school) in the district in XXXXXX in 2010-2011. At the time the complaint was filed, the student was XXXXXXXX and had been diagnosed with XXXXXXXXXXXXXXXX. At the beginning of the 2013-2014 school year, the student attended school for 9 days, September 2 through 13, 2013.
2. According to the parent, she had a meeting with the school Individualized Education Plan (IEP) facilitator on October 18, 2013, and the facilitator stressed the need for an IEP meeting.

3. On November 29, 2012, the district developed an IEP for the student, which was to remain in effect through November 29, 2013. There was an IEP meeting held on August 30, 2013, which was attended by staff and the parent. During the meeting, a draft IEP was considered and the parent received notice of parental rights. A meeting was scheduled for November 21, 2013.
4. The November 21, 2013, meeting was held between the district and the parent. However, meeting notes indicate that the meeting was disrupted by a staff member who had not been invited to participate. As a result, the IEP meeting was stopped at the parent's request. At the time, the parent indicated that the meeting could be reconvened.
5. Instead of reconvening the meeting, the principal sent a letter to the parent dated November 21, 2013, which was received by certified mail on November 25, 2013. The letter stated that the student had been absent from school for 45 days from the start of the school year to November 21, 2013. The letter also indicated that “[d]ue to her lack of attendance the school has been unable to provide her with a Free Appropriate Public Education (FAPE) and [has] withdrawn her from enrollment.”
6. The letter also indicated that the school remained “ready, willing, and able” to provide a FAPE and advised the parent that the district's Home Program was a support that must be in conjunction with school attendance. Finally, the letter advised the parent that “[d]ue to the lack of [student's] attendance Home Program services will cease on November 29, 2013.”
7. The district's compliance officer sent the parent a separate notification letter dated November 22, 2013. That notice indicated that the student had been truant for 45 school days during the 2013-2014 school year, and noted that, because of the absences, the district had been unable to provide her a FAPE.
8. On April 28, 2015, the district sent the student's parent a letter informing her of the district's continued willingness to provide the student with FAPE. The letter explained the services the district would provide if the student enrolled in a home-school or private school, and provided the parent with several different contact numbers.
9. On October 22, 2015, the district's school truancy officer hand-delivered to the parent another letter informing her of the district's obligations under Individuals with Disabilities Education Act (IDEA) and Section 504. The parent responded on October 27, 2015, indicating that the district's offer of services was insincere and that she considered the hand delivery of the letter to be bullying and threatening.
10. The district's policies, including those related to enrollment and provision of FAPE, are publicly available on its website. The district's procedures that apply to the education of disabled students under Section 504 and Title II are also explained in the district's Special Education Procedures Manual, which can be found on-line.

11. The state of Nevada has a mandatory attendance law for children between 7 and 18 years of age. Nevada Revised Statute (NRS) 392.040. The district's attendance enforcement policy, Policy R-5113, allows for retention of elementary students that have more than 20 absences in a school year. The policy also states that it is applicable to disabled students, but subject to the student's Section 504 Plan or IEP and in accordance with IDEA. The district's policy also states that, if properly documented and submitted within the policy's timelines, absences that are due to physical illness or conditions will not be counted in the determinations about retention.
12. Neither the state's statutes nor the district's policy make any reference to withdrawing students, disabled or non-disabled, from the district based on attendance.

Analysis and Conclusion

The Section 504 regulation at 34 CFR § 104.33(a) requires that the district provide a FAPE to each qualified disabled person in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. The Section 504 regulation at 34 CFR § 104.33(b) identifies an appropriate education as the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

Additionally, the Section 504 regulation at 34 CFR § 104.35(a) requires public school districts to conduct an evaluation before any significant change to a disabled student's placement. OCR policies provide that exiting or withdrawing a student with a disability from education services prior to graduation constitutes a significant change in placement. The Section 504 regulation at 34 CFR § 104.35(b) identifies the standards and procedures for the evaluation of students with disabilities that recipients must adhere to in order to ensure compliance with Section 504. School districts must document and interpret that evaluation data and make placement decisions consistent with 34 CFR § 104.35(c), which requires that placement decisions, including decisions regarding withdrawing or exiting a disabled student, must be made by a group of people knowledgeable about the child, the evaluation data, and placement options. Implementation of an individualized education program developed in accordance with IDEA is one means of meeting these requirements. The failure to implement the provisions of a student with a disability's individualized plan may result in the denial of FAPE.

On November 21, 2013, the principal and the district's compliance officer sent the parent certified letters informing her that the student was being dis-enrolled from the school and withdrawn from the district. This included terminating the student's special education services that the student was receiving in her home effective November 29, 2013.

Termination of services constitutes a significant change in placement and, accordingly, must be considered by persons knowledgeable about the student, the student's evaluation information, and placement options. OCR found no evidence to indicate that the determination that the district

was unable to provide the student with FAPE due to the student's non-attendance or the decision to terminate services was made by the student's IEP team.

OCR found that the district's decision to withdraw the student from the district and terminate all of the student's regular and special education services, including the Home Program services, was not made based upon an evaluation conducted by a group of people knowledgeable about the child, the evaluation data, and placement options. Instead, the decision was made by the school principal. Thus, OCR has concluded that the district failed to comply with the requirements of the Section 504 regulation at 34 CFR § 104.35(b) and (c).

The district voluntarily agreed to resolve these compliance issues by submitting the enclosed Settlement Agreement (agreement). 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. The first report under the agreement is due by March 31, 2017.

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.

Thank you and your staff for your cooperation during the investigation of this complaint. If you have any questions regarding this letter, please contact Shirley Oliver, Senior Equal Opportunity Specialist, by telephone at (206) 607-1633, or by e-mail at shirley.oliver@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Settlement Agreement

Page 5 – OCR Reference No. 10141360

cc: Honorable Steve Canavero, Superintendent of Public Instruction
Deputy General Counsel for the District
Parent of Student in Question