



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

June 29, 2015

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

Mr. Jim Schlachter
Superintendent
Gresham-Barlow School District 10J
1331 NW Eastman Parkway
Gresham, Oregon 97030-3825

Re: Gresham-Barlow School District 10J
OCR Reference No. 10151079

Dear Superintendent Schlachter:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint of disability discrimination against the Gresham-Barlow School District 10J (the district). The complaint alleged that the district discriminated against a student at the XXXXXXXX, on the basis of disability, when it failed to conduct an appropriate evaluation to determine whether she had a disability that required special education and/or related aids and services in fall 2014.

OCR conducted its investigation under section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990. These laws prohibit disability discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. Because the district receives 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. Our findings and conclusions, set forth below, are based on a review and analysis of written information provided by the student's parent and the district, and interviews with the student's parent, the school counselor, and the school psychologist.

Findings of Fact

1. The student was a junior at XXXXXXXX (the school) during the 2014-2015 school year.
2. In April 2014, during the student's sophomore year, the student's parent presented a letter dated April 21, 2014, from a doctor to the school counselor which recommended "an IEP evaluation for attention deficit disorder" for the student. Upon receiving the doctor's letter from the parent, on April 22, 2014, the school counselor placed the student on the agenda for the next scheduled Student Assessment Team (SAT) meeting to be held on June 4, 2014. The school psychologist and the school counselor indicated to OCR that student SAT meetings are typically held once a

month and are used to review individual students who are struggling in school, either academically or behaviorally, to determine what actions can be taken to support students.

3. On June 4, 2014, the SAT, which included the school counselor and school psychologist, met to determine whether the student should be evaluated for special education and/or related aids and services. The school psychologist conducted a file review for the student, and the school counselor sought input from the student's teachers regarding their observations of the student in preparation for this meeting.
4. On June 25, 2014, the district sent a "Notice of Special Education Action" to the parent which stated that the district would not evaluate the student for special education. The notice stated that an evaluation was refused because the student's teachers did not see ADD behaviors, the student did not have a history of ADD, and the student had earned all of her attempted credits and had not received a grade lower than a C. The notice stated that the team would meet again in the fall to review any new information from the student's disability-related testing that the parent was planning to have conducted over the summer.
5. In September 2014, the student's parent delivered a letter dated September 9, 2014, to the school counselor which summarized the testing that the student underwent over the summer. The letter, written by a child and adolescent psychiatry fellow, diagnosed the student with ADD-inattentive type and social anxiety disorder, recommended that the student have an "IEP in place at school to help compensate for her ADHD and anxiety symptoms" and be "tested for specific learning disability to rule out conditions that can also hinder academic performances."
6. On September 17, 2014, the school counselor requested that the student be added to the agenda for the next scheduled SAT to be held on October 15, 2014. The school counselor stated in that e-mail that the SAT previously told the parent that they would not evaluate the student, and that she was "assuming that we will say the same thing next time and then we'll go from there."
7. On October 15, 2014, at 12:51pm, the school counselor sought input from the student's teachers via e-mail regarding their observations of the student in preparation for this meeting. This e-mail indicated that the SAT meeting was scheduled "in an hour," and asked the teachers to respond even if the meeting time had already passed. No teachers responded to the school counselor's e-mail before the start of the SAT meeting.
8. On October 15, 2014, the SAT met for a second time to determine whether the student should be evaluated for special education and/or related aids and services. At the time of the meeting, the student had a B grade in her Anatomy and Physiology and Physical Education classes; a C grade in her English class; a D grade in her Economics and Algebra classes; and an F grade in her Journalism and AVID classes. AVID is a class that focuses on improving study and organizational skills and helps develop critical thinking skills in preparation for college. The student's parent attended this meeting and expressed concerns about the student's classroom anxiety and her ability to focus in class, as well as the student's inattentive behavior in the home, and stated that she wanted her daughter evaluated for an Individualized Education Plan (IEP) because two different doctors had recommended it. The district provided to OCR a copy of the October 15, 2014 "SAT Agenda and Meeting Notes" which states that the student's teachers'

concerns were that the student had not completed proficiency tests and that the student's homework completion was a problem. At the conclusion of the meeting, the SAT determined not to evaluate the student for special education and/or related aids and services.

9. Following the October 2014 SAT meeting, the school counselor met with the student to discuss strategies she could use to help her with her organization, which included sitting near the front of the class and taking a picture of the blackboard with her telephone to memorialize notes, due dates, and assignments. The school counselor e-mailed the student's teachers on October 16, 2014, to inform them that she discussed these strategies with the student, and asked the teachers for any recommendations for other strategies that could assist the student.
10. On December 11, 2014, the student's AVID teacher e-mailed the school counselor to inform her that the student's parent was in touch with her to express concerns about the student's progress. The school counselor indicated to the student's AVID teacher that the student was on the agenda for the SAT the following week. On December 15, 2014, the school counselor sought input from the student's teachers via e-mail regarding their observations of the student in preparation for this meeting.
11. On December 17, 2014, the SAT met for a third time to determine whether the student should be evaluated for special education and/or related aids and services. At the time of the meeting, the student had a B grade in her Physical Education class; a C grade in her English and Anatomy and Physiology classes; a D grade in her Economics and Algebra classes; and an F grade in her Journalism and AVID classes. At this meeting, the parent expressed concern about her daughter's 12-week grades and stated that she wanted the student evaluated as the doctor requested in her report. The school counselor provided feedback from the student's teachers, who reported that they did not see inattention or anxiety from the student in class, but that her low grades were because of missing homework assignments and quizzes. The school psychologist and school counselor stated to OCR that because the student was passing all of her "core classes," which was defined as classes that were required for graduation, and because she was performing like her peers, there was not an academic impact, and therefore the student had not demonstrated the need for special education.
12. On January 8, 2015, the district sent a "Notice of Special Education Action" to the parent which stated that the district would not evaluate the student for special education. The notice stated that an evaluation was refused because the student was passing all of her core classes, and because the student "has access to a research-based curriculum designed to help students improve their organization skills in the AIVD class." The notice stated that because of the student's ADD diagnosis, the SAT recommended that the 504 Team consider potential accommodations. The school psychologist and school counselor stated to OCR that the IEP SAT is composed of the same individuals as the 504 team, and has the same process as the SAT.
13. The parent stated to OCR that sometime in January 2015, the student brought home a document from her AVID teacher that stated that if the student did not improve her grade, she would be removed from the AVID program. The parent stated that she and the student signed the document and the student returned it to her AVID teacher.

14. At the conclusion of the first semester on January 29, 2015, the student had a C grade in her English, Anatomy and Physiology, and Physical Education classes; a D grade in her Economics and Algebra classes; and an F grade in her Journalism and AVID classes.
15. On March 2, 2015, the SAT met to determine if the student should be placed on a 504 plan. The “Notice of 504 Team Decision” provided to the parent states that “the team determined that Kathryn is accessing public education at a level similar to the average student and does not need additional accommodations, services or supports.” The notice states that because the student has access to the AVID program, she is progressing in line with her peers. The school psychologist and school counselor stated to OCR that the student has been serving as a teaching assistant in her AVID class during the second semester, which has helped her increase her grades. The school psychologist stated that at the time of the March 2, 2015, SAT meeting, the student was passing all of her second semester classes.

Analysis and Conclusion

The issue OCR investigated was whether the district failed to conduct an appropriate evaluation to determine whether the student had a disability that required special education and/or related aids and services.

The Section 504 regulation at 34 CFR 104.33(a) states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An “appropriate education” is defined by 34 CFR 104.33 as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and are based upon adherence to procedures that satisfy the requirements of Section 504. The Section 504 regulation at 34 CFR 104.35(a) states that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of Section 504 of 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 regulations implementing Title II are comparable to the Section 504 requirements. While Section 504 does not require that districts test all students for whom evaluations are requested, an evaluation should be conducted when there is a reasonable basis for suspecting that the student has a disability that may require special education or related aids and services.

In this case, the evidence established that there was a reasonable basis for suspecting that the student has a disability that may require special education or related aids and services. The student’s mother provided the district with two separate diagnoses which indicated that the student had ADD, and expressed concerns about the student’s inattentiveness and anxiety at home. Teachers reported that the student had trouble with completing missing assignments and quizzes. The members of the district’s SAT team stated to OCR that they believed that an evaluation was not necessary because the student was passing her “core classes.” However, the student’s grades, which included a C grade, two D grades, and two F grades at the October 15, 2014, SAT meeting, were below average and continued

to decline throughout the fall 2014 semester. Additionally, the district stated that the student's AVID class provided support for the student's needs, but the student failed her AVID class for the first semester and was informed in January 2015 that she would be removed from the AVID program if her grade did not improve.

The information the district had in fall 2014 was sufficient to provide a reasonable basis to suspect the student had a disability that may require special education or related aids and services. Therefore, the district was required to conduct an evaluation of the student to determine if the student had a disability that required special education and/or related aids and services.

Based on the foregoing, OCR concludes that the district failed to comply with the regulations implementing Section 504 and Title II. The district voluntarily agreed to resolve these compliance issues by submitting the enclosed Settlement Agreement. OCR will monitor the district's implementation of the agreement.

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 Caitlin Burks, Attorney, by telephone at (206) 607-1620, or by e-mail at caitlin.burks@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

Enclosure: Settlement Agreement

cc: Rob Saxton, Deputy Superintendent of Public Instruction

