



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

February 4, 2016

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Mr. David McVicker  
Superintendent  
Central Kitsap School District No. 401  
P.O. Box 8  
Silverdale, Washington 98383-0008

Re: Central Kitsap School District No. 401  
OCR Reference No. 10161045

Dear Superintendent McVicker:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), is discontinuing its investigation of the above-referenced discrimination complaint against the Central Kitsap School District because it has obtained an agreement to address the allegations in the complaint. The complaint alleged that the district discriminated against a student, based on disability, when it failed to implement provisions in the student's Section 504 plan. Specifically, it was alleged in the complaint that: (1) district staff confronted the student about an incident on November 13, 2015, and did not allow the student to think and cool down before staff members continued to question the student; and (2) on November 13 and 19, 2015, district staff members did not allow the student to refocus in the main office.

As explained below, prior to the completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the allegations contained in the complaint.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973, title II of the Americans with Disabilities Act of 1990, and their respective implementing regulations. These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the Department and by public entities, respectively. The district receives federal financial assistance from the Department, is a public entity, and is, therefore, subject to the stated regulations.

The Section 504 regulation at 34 CFR 104.33(a) requires public school districts to provide a free appropriate public education to all students with disabilities within their jurisdictions regardless of the nature or severity of the student's disability. Under 34 CFR 104.33(b)(1),

an appropriate education is the provision of regular or special education and related aids and services designed to meet the individual needs of students with disabilities as adequately as the needs of nondisabled students are met, and developed in accordance with the procedural requirements of 34 CFR Sections 104.34 through 104.36 pertaining to educational setting, evaluation and placement, and procedural protections. The regulations implementing Title II at 28 CFR 35.130(b)(1)(ii) and (iii) are comparable to the Section 504 regulations.

The investigation to date established that during the fall 2015 school term, the student was an 8th grader at the district's Fairview Middle School. The student's 504 plan required that: (a) when confronted, allow the student time to think and cool down, check if ready to continue, allow additional time if not ready; and (b) allow the student to refocus in office environment if space other than a classroom is needed.

On November 13, 2015, the student and another student were roughhousing in the school cafeteria. The school security person, who observed the students roughhousing, asked them to go to the refocus room. The refocus room also serves as the in-school suspension room. The student allegedly defied the security person and instead went to the main office and called his parent, who picked him up. The school imposed a one day out-of-school suspension and two days in-school suspension on the student for defiance, intimidating behavior, and refusing to report to the refocus room when asked. On November 19, 2015, the student's classroom teacher sent the student to the refocus room for failing to remain on task during classroom instruction.

The student's parent alleged that district personnel failed to implement the student's 504 plan when they allegedly confronted the student on November 13 and did not allow sufficient time for the student to think and cool down. The parent stated that school staff members should have asked the student to go to the main office on November 13 and 19, rather than to the refocus room, as agreed to by the 504 team.

District personnel told OCR that they considered the refocus room an alternative office environment and that it is an appropriate area for the student to refocus. District personnel further maintained that school staff members did not confront the student as alleged in the complaint.

OCR found that the relevant provision in the 504 plan was not clear as to the meaning of an office environment. Additionally, the information provided by the district and the parent were inconsistent as to whether the district staff members confronted the student during the November 13 incident and whether he was allowed time to think and cool down before staff members continued to question him.

In accordance with Section 302 of OCR's Case Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an

agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and must be consistent with applicable regulations. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

The actions the district will take under the agreement will include the district revising the student's 504 plan to clarify where the student is required to refocus, and ensuring that the student's 504 plan is implemented as written.

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 February 9, 2016.

Thank you for your cooperation throughout this investigation. If you have any questions, please feel free to contact Kwame Amoateng, attorney, by telephone at (206) 607-1602, or by e-mail at [kwame.amoateng@ed.gov](mailto:kwame.amoateng@ed.gov).

Sincerely,

/S/

Sukien Luu  
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Honorable Randy Dorn  
Superintendent of Public Instruction