



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

September 19, 2018

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Mr. Tony Giurado
Superintendent
Tahoma School District No. 409
25720 Maple Valley-Black Diamond Road SE
Maple Valley, Washington 98038

Re: Tahoma School District No. 409
OCR Reference No. 10161071

Dear Superintendent Giurado:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the referenced complaint against Tahoma School District No. 409. OCR investigated whether the district discriminated against a Student, on the basis of disability, when it failed to notify the Student's parents of the procedural safeguards regarding the identification, evaluation, and educational placement of the student under Section 504.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504). The regulation that implements Section 504 at 34 C.F.R. Part 104 prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance. The district receives federal financial assistance from the Department and is required to comply with this law.

The regulation implementing Section 504 at 34 C.F.R. § 104.36 requires a recipient (e.g., district) to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

The Section 504 regulation at Appendix A clarifies the citation at 34 C.F.R. § 104.36, by requiring a recipient to provide such notice before the recipient takes any action regarding the identification, evaluation, or educational placement of a disabled student.

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Information provided by the district established that the district has policies and procedures regarding the identification, evaluation, and educational placement of students with disabilities which include procedural safeguards, and that its policies and procedures are available on the district website. In addition, the district also has a handbook that provides additional detailed information regarding Section 504 and the associated procedural safeguards. The handbook includes a section, entitled “Your Rights under Section 504,” which explains to parents their rights and their children’s rights under Section 504. Included in the rights of parents explained in this section are the right to notice before the district takes any action regarding the identification, evaluation, and placement of their child; their right to review their child’s educational records and to receive copies at reasonable cost; and their right to request mediation or an impartial due process hearing if they disagree with the district’s decisions regarding their child’s identification, evaluation, educational program or placement under Section 504. The district’s handbook is also available on the website.

OCR determined that the information contained in the district’s handbook is sufficient to meet the district’s requirement under the Section 504 regulation at 34 C.F.R. § 104.36 to provide parents with information that explains any evaluation and placement decisions affecting their child, explains the parents’ right to review their child’s educational records, and explains their right to appeal any district decision regarding the evaluation and placement of their child through an impartial hearing.

OCR established that the school nurse and the Student’s parent attended a meeting on August 29, 2014. During this meeting, the parent signed a “Notice of Action/Consent Form” consenting to an initial evaluation and placement of the student on a Section 504 plan. This form stated that a “Notice of parent/guardian and student rights” was attached.

OCR has a concern, however, that the district provided a revised Section 504 plan at a subsequent Section 504 meeting on November 20, 2015, but did not provide notice to the parent notice of her procedural safeguards. A review of the November 20, 2015, Section 504 plan had material revisions which would constitute a change in the educational placement of the student and trigger the notice requirement.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, prior to the point a final determination is issued, the recipient expresses an interest in resolving the complaint allegation with a Voluntary Resolution Agreement (agreement) and OCR determines that it is appropriate to resolve the issues under investigation with such an agreement. With respect to the complaint, prior to OCR making a final determination regarding the issue investigated in the referenced complaint, the district expressed an interest in voluntarily resolving the complaint. In light of the district’s willingness to address the complaint allegation

comprehensively, OCR determined it was appropriate to enter into an agreement to resolve the issue under investigation. Subsequent discussions with the district resulted in the district superintendent signing the enclosed agreement, which when fully, implemented will address the issue raised in this 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. The first report under the agreement is due by December 3, 2018.

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 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 for your assistance in resolving this matter. If you have any questions, please contact Steve Riley, the OCR staff member assigned to this complaint. You can reach Mr. Riley at (206) 607-1635 or at steven.m.riley@ed.gov.

Sincerely,

Kelli Lydon Medak
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement