



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

March 21, 2017

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Dr. Tammy Campbell
Superintendent
Federal Way School District No. 210
33330 8th Avenue South
Federal Way, Washington 98023

Re: Federal Way School District No. 210
OCR Reference No. 10161644

Dear Superintendent Campbell:

This is to advise you of the resolution of the above-referenced complaint investigation of the Federal Way School District No. 210 (the district) by the U.S. Department of Education (Department), Office for Civil Rights (OCR). As explained below, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Resolution Agreement (agreement) to address the complaint allegations.

The complaint alleged that the district discriminated against a student on the basis of disability when it:

1. Failed to provide the student's parent with notice of the student's November 15, 2015, Section 504 plan and failed to provide the parent with a copy of the 504 plan until late March 2016.
2. Failed to implement the student's November 15, 2015, Section 504 plan during the 2015-2016 school year.
3. Failed to re-evaluate the student to determine whether the behavior that resulted in the March 2016 emergency expulsion was a manifestation of his disability and whether the expulsion, which lasted for more than 10 school days, was a significant change in placement.

OCR accepted this complaint for resolution under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) as amended, 29 U.S.C. § 794, and its implementing regulations and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, *et. seq.*, and its 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 is a recipient of federal financial assistance from this Department and is a public entity, and is therefore subject to Section 504 and Title II.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR has identified compliance concerns with respect to allegations Nos. 1 and 2 and has gathered sufficient information to support a violation of Section 504 and Title II regarding allegation No. 3.

With respect to allegation No. 1, that the district failed to provide the student's parent with notice of the student's Section 504 plan, the regulation implementing Section 504 at 34 C.F.R. § 104.34 requires districts 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 applicable Title II regulatory provision is set forth at 28 C.F.R § 35.130 and is interpreted consistent with the provisions of Section 504 mentioned above.

The investigation to date indicates that the district developed a Section 504 plan on November 15, 2015. The parent of the student informed OCR that she was unaware of the Section 504 plan and its contents until April 2016. At this point in the investigation, the district has been unable to locate and produce any evidence to rebut this allegation.

Regarding allegation No. 2, that the district failed to implement the student's Section 504 plan, the regulation implementing Section 504 at 34 C.F.R. §104.33 requires districts to provide disabled students with a free appropriate public education. The regulation defines an appropriate education as the provision of regular and special education and related aids and services that are designed to meet individual educational needs of disabled students as adequately as non-disabled students and are based on the procedures contained in the Section 504 regulations. The applicable Title II regulatory provision is set forth at 28 C.F.R § 35.130 and is interpreted consistent with the provisions of Section 504 mentioned above.

The investigation to date indicates that the district had developed a Section 504 plan for the student in November 2015 and that plan was to be implemented through the remainder of the 2015-2016 school year. The parent maintains that the Section 504 plan was not consistently implemented during the 2015-2016 school year and not at all after her son was expelled from school. In the narrative response to OCR's data request, the district stated that while it believes the teachers likely implemented the plan, the district is unable at this point to demonstrate through written evidence that it consistently implemented and monitored implementation of that plan during the 2015-2016 school year.

With respect to allegation No. 3, that the district failed to conduct a manifestation meeting, the regulation implementing Section 504 at 34 C.F.R. § 104.35 requires that a district conduct an evaluation in accordance with the requirements of Section 504 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 applicable Title II regulatory provision is set forth at 28 C.F.R § 35.130 and is interpreted consistent with the provisions of Section 504 mentioned above.

The investigation shows that on March 30, 2016, the student was emergency expelled for the remainder of the school year. The student missed approximately 50 school days during this expulsion. In the narrative response, the district confirmed that the student was expelled for more than 10 days and that that the district failed to conduct a review to determine whether the student's conduct prompting the expulsion

was a manifestation of the student’s disability prior to the expulsion. The district further stated that had such a review been conducted in a timely manner, the district would likely have determined that the conduct was a manifestation of the student’s disability and the student would likely have returned to school after no more than 10 days of expulsion. The district informed OCR that it has already attempted to proactively mitigate the student’s missed educational opportunity during the expulsion by providing compensatory educational services to the student in the late spring and summer of 2016. Further, during a February 2017 special education meeting with the parent, the district offered additional educational services to the student to remedy any lost educational opportunity. Because the student missed more than 10 school days due to the expulsion, which was a significant change in placement, and the district failed to conduct a meeting in accordance with the requirements of Section 504 to determine whether the conduct at issue for the discipline was a manifestation of the student’s disability, OCR concludes that the district failed to comply with Section 504 and Title II with respect to this allegation.

Before OCR completed its investigation with respect to allegations Nos. 1 and 2, the district expressed an interest in voluntarily resolving this case. In light of the district’s willingness to address the concerns and violation comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

The district submitted a signed agreement to OCR on March 20, 2017. When fully implemented, the agreement will address the concerns and findings of non-compliance noted above. The district committed to take actions including: (1) the district will review and revise, as necessary, its policies and procedures to ensure that they incorporate the requirements of Section 504 with respect to providing notice to parents, implementing Section 504 plans, and conducting manifestation meetings; (2) the district will provide notification of and train its staff on these required changes to its policies and procedures; (3) the district will convene a meeting of knowledgeable persons, including the student’s parent(s) to determine whether the student needs compensatory educational services based on the missed school days and will provide any services determined by the team to be necessary.

OCR will monitor the recipient’s implementation of the agreement. When OCR concludes the district has fully and effectively implemented the terms and obligations of the agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If the district fails to implement the agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the agreement. Before initiating administrative (34 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the agreement, OCR will give the district written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR’s investigation of the complaint. These findings 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 regardless of OCR’s determination.

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 the cooperation that you and your staff extended to OCR staff in resolving this complaint. We look forward to receiving the district's first report under the agreement due by May 1, 2017. If you have any questions, please feel free to contact Mark Farr, Equal Opportunity Specialist, by telephone at (206) 607-1607, or by e-mail at mark.farr@ed.gov.

Sincerely,

Paul Goodwin
Team Leader

Enclosure: Resolution Agreement

cc: Honorable Chris Reykdal, Superintendent of Public Instruction