



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 6, 2023

Via E-mail Only to: supt@cloverpark.k12.wa.us

Superintendent Ron Banner
10903 Gravelly Lake Drive SW
Lakewood, Washington 98499

Re: Clover Park School District No. 400
OCR Reference No. 10231118

Dear Superintendent Banner:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Clover Park School District (District) with the U.S. Department of Education, Office for Civil Rights (OCR). OCR investigated whether, on December 5, 2022, the District discriminated against Student A, on the basis of disability, by failing to implement the provision of Student A's 504 plan during a medical emergency.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability and retaliation in programs and activities receiving federal financial assistance. OCR also conducted its investigation under the authority of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulations, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability and retaliation by public entities. The District is a recipient of federal financial assistance from the Department and is a public entity. Therefore, the District is subject to these federal civil rights laws.

With respect to the allegation that the District failed to implement Student A's 504 plan, OCR has determined that the evidence is insufficient to support a conclusion that the District failed to comply with Section 504 and Title II. OCR's findings of fact and conclusions, set forth below, are based upon information and documents provided by the Complainant, by Student A, and by the District.

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While conducting OCR’s investigation, OCR identified concerns regarding the District’s compliance with the procedural requirements of Section 504 and Title II. As explained below, prior to completion of OCR’s investigation, the District expressed an interest in voluntarily resolving these concerns and signed the enclosed Voluntary Resolution Agreement (agreement).

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the student’s disability. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and that are based upon adherence to Section 504’s procedural requirements.

When interpreting evaluation data and making placement decisions, the Section 504 implementing regulation, at 34 C.F.R. § 104.35(c), requires a district to draw upon a variety of sources, ensure that all information is documented and carefully considered, and ensure that the placement decision is made by a group of individuals knowledgeable about the student, the meaning of the evaluation data, and the placement options.

The Section 504 implementing regulation, at 34 C.F.R. § 104.36, requires a district to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, 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.

OCR interprets the Title II regulations consistent with the requirements of Section 504.

Facts

Student A is a qualified person with disabilities that substantially limit one or more major life activities. During the 2022-2023 school year, Student A was in the 12th grade at XXXXXX (School). Student A has had a Section 504 plan since she started at the School in the 9th grade, and her Section 504 plans, including the plan in effect on XXXXXXXX, refer to Student A’s emergency health and asthma care plans (emergency plans) as accommodations with reference to Student A’s disability-related needs.

On XXXXXX, Student A's parent and a health clerk (signing as health room staff), signed an updated emergency plan for Student A; on XXXXX, a school nurse signed as well. The XXXXXXXX, emergency plan provides, in bold, that 911 was to be called if Student A suffered a blow to any area [of her body], and/or if her asthma worsened in severity and/or did not improve with the use of an inhaler. The plan does not reflect that 911 should be called before providing any other emergency care to Student A in the event she suffered a blow.

On XXXXX, a different school nurse (Nurse A), revised Student's emergency plan to state, again in bold, that 911 should be called if Student A suffers a blow to the chest area (not anywhere on her body), or if any difficulty Student A is having to breathe does not resolve with rescue medication. The plan Nurse A revised does not reflect that any other District staff, or Student A's parents, reviewed or signed it beforehand.

On or about XXXXXXXX, the District developed an updated 504 plan for Student A. The XXXXXX 504 plan provides that 911 should be called if Student A takes a blow to the chest, and that Student A should be further assessed while waiting for the paramedics. Student A's counselor signed the XXXXXX 504 plan on XXXXX. No one else signed the XXXXXX 504 plan until XXXXXXXX. District records indicate that the contents of the XXXXXX 504 plan were not distributed to District staff until XXXXXXXXXX.

On XXXXXX, at approximately 7:15 a.m., Student A was involved in a physical altercation with another student before school hours while on campus, after which Student A sought treatment from the school nurse (Nurse B).

Student A told OCR that she told Nurse B that she had been hit in the chest and was having trouble breathing. Student A was given her inhaler, but Student A said that this did not help and she kept repeating that she could not breathe. According to Student A and Student A's parent, Student A called her mother, who then insisted that a staff person call 911.

District records reflect that Student A arrived in Nurse B's office at 7:18 a.m. "post-altercation." Student A told Nurse B she was hit in the chest, and Nurse B assessed Student A's vital signs and provided Student A her inhaler. Student A called her parent, who requested that District staff call 911. Nine-one-one was called at 7:19:06 a.m. Emergency medical services (EMS) arrived at 7:46 a.m., and Student A was checked out of the School at 7:52 a.m. for transport to the hospital.

It is the Complainant's position that the District failed to implement Student A's 504 plan on XXXXX, when District staff provided other emergency care to Student A first and did

not call 911 until Student A's mother requested that they do so. It is the District's position that it complied with Student A's 504 plan by calling 911 within approximately one minute of Student A arriving in Nurse B's office.

Analysis – Failure to implement

The evidence establishes that Student A's 504 plan in effect on XXXXX, required District staff to call 911 if Student A suffered a blow. The evidence shows that on XXXXXXXXX, District staff were aware that Student A had been struck somewhere on her body, triggering the requirement under her emergency plan to call 911. The evidence further shows that when Student A arrived in Nurse B's office, Student A was provided emergency care, and, after Student A's mother requested it, 911 was called. District records reflect that the 911 call was placed within approximately one minute of Student A's arrival in Nurse B's office. The Complainant did not provide information to OCR contradicting this timeline.

Based on the foregoing, there is insufficient evidence to establish that the District failed to implement Student A's 504 plan on XXXXXXXXXX. As such, OCR is unable to conclude that the District failed to comply with Section 504 or Title II with respect to the allegation investigated.

Analysis – Procedural concerns

The evidence establishes that Student A's emergency plan was changed by a school nurse on XXXXXXXXX, and that Student A's 504 plan was changed by Student A's counselor on XXXXXXXX. These changes were material and limited the circumstances triggering the requirement that District staff call 911 for Student A in the event of a medical emergency. Evidence OCR gathered during its investigation reflects that these changes may have been made without notice to or the involvement of other members of Student A's 504 team, including Student A's parents. Based on this, OCR has identified a concern that the District may not have complied with procedural requirements of Section 504 set forth at 34 C.F.R. § 104.35, Evaluation and placement, and § 104.36, Procedural safeguards.

In accordance with the OCR *Case Processing Manual* (CPM) under Article III, when during the course of an investigation, OCR identifies compliance concerns and/or violations involving issues that were not raised in the complaint, OCR may address any compliance concerns and/or identified violations in a resolution letter and resolution agreement.

Under Section 302 of the OCR *CPM*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the District requested to resolve OCR's concerns prior to the conclusion of OCR's investigation. In light of the District's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the District resulted in the District signing the enclosed agreement.

The actions the District will take under the agreement include reviewing and revising its policies, procedures, and practices to ensure that they are consistent with the requirements of Section 504 and Title II, including with reference to medication or treatment orders, nursing plans, individual health care plans, and emergency health plans, and conduct training of employees concerning these revised policies, procedures, and practices.

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 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 individual 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.

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OCR will monitor the implementation of the agreement and will close the monitoring of the agreement when OCR determines that the District has complied with the terms of the agreement and the statutes and regulations at issue in this complaint.

Thank you for the cooperation that you and the District's staff extended to OCR in resolving this complaint. If you have any questions, please contact me at (206) 607-1614 or at margot.stevens@ed.gov.

Sincerely,

Margot Stevens
Attorney

Enclosure: Voluntary Resolution Agreement

cc: XXXXXXXXXXXX, Vandeberg Johnson & Gandara, PS (via e-mail Only to:
XXXXXXXXXX

Superintendent Chris Reykdal, Washington Office of Superintendent of Public
Instruction (via e-mail only to: superintendent@k12.wa.us)