



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

January 22, 2015

Superintendent XXX XXXXX
XXXXX XXXX XXXXXXXXXXXX School District XXX
XXXX XXXXXXXX XX
XXXXXX XXXX, XX XXXXX

Re: OCR Docket #05-14-1290

Dear XX. XXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against XXXXX XXXX XXXXXXXXXXXX School District XXX (District) on June 25, 2014, alleging discrimination on the basis of disability. Specifically, the complaint alleges that the District discriminated against Student A on the basis of disability (XXXXXXXX XXXXXXXXX) when:

1. In XXXXXXXX 2014, the District failed to provide Student A’s parent(s) with notice of her due process rights;
2. In XXXXXXXX 2014, the District failed to evaluate Student A to determine whether he is a student with a disability in need of special education and related services prior to suspending him for more than 10 cumulative days; and
3. Beginning in December 2013 until present, the District subjected Student A to a hostile environment based on disability when District students harassed Student A because of his disability, and the District was aware of the harassment but failed to take prompt and effective action to address it.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, as well as Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of funding from the Department of Education and a public entity, the District is subject to these laws.

Allegation 1

Allegation 1 of the complaint alleges that the District failed to provide Student A’s parents with notice of the procedural safeguards as required by Section 504. The Section 504

implementing regulation at 34 C.F.R. § 104.36 requires, with respect to the identification, evaluation and placement of students with disabilities that the District provide “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 regulation further provides that compliance with the procedural safeguards of IDEA is one means of addressing this requirement.

OCR reviewed Student A’s school records, which include the following: a consent for evaluation form wherein Student A’s mother signed that she understood her rights as “contained in the Parents’ Rights in Brief, which I have received and reviewed,” a copy of the Parents’ Rights in Brief, and a separate form acknowledging: “[t]he attached Parents’ Rights in Brief is designated to provide a brief explanation of the important information regarding the safeguards to which parents/guardians and children are entitled.” Student A’s mother acknowledged that she signed a form stating that she received a copy of the Parental Rights’ in Brief, but told OCR that the Principal failed to provide her an actual document, and instead only verbally advised her that she could locate her parental rights on the District’s website. She explained that she signed the document because she assumed that it meant she was informed as to where she could locate her parental rights. The District disputes this, and the Principal reported to OCR that she provided Student A’s parents with a copy of the Parents Rights in Brief when Student A’s mother consented to the evaluation in XXXXXXXX as well as during the eligibility team meeting.¹

In making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation. OCR weighed the conflicting testimony of the parties and determined that the preponderance of the evidence does not substantiate that the District failed to provide Student A’s parents with notice of the procedural safeguards. Accordingly, OCR concludes that the evidence is insufficient to establish that the District was in violation of Section 504, as alleged.

Allegations 2 and 3

The District requested to resolve these complaint allegations prior to the conclusion of OCR’s investigation. In accordance with Section 302 of OCR’s *Complaint Processing Manual*, subsequent discussions with the District resulted in the District signing the enclosed Resolution Agreement which, when fully implemented, will resolve the issues raised allegations 2 and 3. OCR looks forward to receiving documentation from the District demonstrating compliance with the Resolution Agreement.

¹ The Parents’ Right’s in Brief complies with 504 at 34 C.F.R. § 104.36 and a summary of parental rights can be located in the School Board policies on the District’s website at XX.

Conclusion

This concludes OCR's investigation of the complaint and 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 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, Student A 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.

If you have any questions or concerns about OCR's determination, you may contact either Ms. Melissa Howard, Attorney, at (312) 730-1527 or Melissa.Howard@ed.gov.

Sincerely,

Karen E. Tamburro
Supervisory Attorney

Enclosure

cc: XXXXXXXXX XXXXXXXX, Esq.