



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

July 29, 2015

Dr. George Mannon
Superintendent
Torrance Unified School District
2335 Plaza Del Amo
Torrance, California 90501

(In reply, please refer to case no. 09-14-1438.)

Dear Superintendent Mannon:

On August 14, 2014 the U.S. Department of Education, Office for Civil Rights (OCR), notified you that we were investigating the above-referenced complaint against the Torrance Unified School District (District). The complainant alleged the District discriminated against a student¹ (Student) based on disability. The specific allegations OCR opened for investigation were:

1. Whether the District failed to provide Student with a free appropriate public education (FAPE) by failing to timely assess the Student under Section 504 and disciplining the Student without following adequate evaluation and placement decisions; and
2. Whether the District discriminated against the Student on the basis of his disability when his interdistrict transfer was revoked based on behaviors consistent with his disability.

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973, and its respective implementing regulations. Section 504 prohibits discrimination on the basis of disability, in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds and is subject to the requirements of Section 504 and Title II.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR it would voluntarily take steps to address the compliance concerns raised in the complaint. The District entered into an agreement to resolve the complaint on July 22, 2015. Accordingly,

¹ OCR informed the District of the complainant's and Student's identities in our letter notifying it of the complaint. We are withholding them here to protect their privacy.

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 did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 or Title II.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement (including disciplinary action that results in a significant change in placement). Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Section 104.35(c) of the regulations require that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

The exclusion of a disabled student from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

OCR's preliminary investigation showed the following:

- The Student was enrolled at a District elementary school (School) during the 2013-2014 school year on an interdistrict transfer. The Complainant communicated to the District on several occasions that the Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and anxiety and qualified for services under the Individuals with Disabilities Education Act (IDEA) or Section 504. The Complainant contends that the District's delay in evaluating the Student resulted in the Student not being afforded a FAPE and in the District revoking his interdistrict transfer for behavior related to his disability.
- The Complainant communicated several times to different people in the District her concern that the Student's ADHD affected his behavior and learning. In a SST team meeting on January XX, 2014 (after the Complainant raised concerns about the Student's ADHD, behavior, and learning), the District team decided to not assess the Student. The Complainant challenged the SST determination and soon thereafter the District agreed to begin the assessment process.
- On April XX, 2014, an IEP meeting was held to review the evaluations of the Student and to determine if he was eligible for services under IDEA. During this meeting, the Complainant submitted a diagnosis of the Student's ADHD and anxiety to the team. The team determined that the Student was not eligible for services under IDEA. The Complainant expressed her disagreement, and she asked for a Section 504 plan for the Student. During the IEP meeting, District representatives informed the Complainant that she needed to request the Section 504 process in writing. The following week, the Complainant wrote to the District requesting a meeting to discuss her concerns regarding the Student's special education evaluation and challenging the IEP determination.
- On April XX, 2014, the Student was disciplined for allegedly making inappropriate comments to other classmates. The Complainant emailed the Principal stating that the Student's behavior reflected his need for additional services and expressing her concern that the Student was being disciplined for behavior caused by his disability. The Principal responded to this email noting that the Student did not qualify for an IEP and because the IEP was in dispute, the District could not begin the Section 504 process.
- In a letter dated April XX, 2014, the School's Principal sent the Complainant a pre-SARB letter indicating that the Student was absent 10 days and tardy 3 times since the beginning of the 2013-2014 school year; and absent 7 days and tardy 2 times in the 2012-2013 school year.
- Around April XX, 2014, the Complainant provided two letters to the School from the Student's medical doctor noting the Student's diagnosis of ADHD and listing accommodations including: (1) a flexible school schedule for intermittent time off for a total of two hours once a month; and (2) continued enrollment in the District in order for the Student to access the medical facility.
- On May XX, 2014, the Complainant again wrote to the District requesting an evaluation for a Section 504 plan. In correspondence between the School's Section 504 Coordinator and the Principal, the Principal stated that the Special Education Director had clarified that the IEP did not need to be signed to proceed with Section 504. On May XX, the District sent the

Complainant the paperwork to begin the Section 504 assessment process. The Complainant submitted the paperwork around June X, 2014.

- On June XX, 2014, the District notified the Complainant that the Student's interdistrict permit had been revoked and that he had been withdrawn from the District because he had failed to make progress and/or improved in the areas of "absences and/or tardies" and "unsatisfactory citizenship."² The Complainant appealed the revocation asserting that she had not been notified of any problems with the Student's attendance until the Principal's April XXth pre-SARB letter, and that all the Student's absences were excused and related to medical appointments known to the School. Around July XX, 2014, the Principal sent the Complainant a letter reiterating that the Student's interdistrict permit and been revoked.
- During the 2014-2015 school year, as a result of the revocation of the interdistrict permit, the Student attended school in another District. According to the Complainant, the Student had a 504 plan in place during the 2014-2015 school year for his ADHD and anxiety.
- Subsequent to OCR opening the case for investigation, the District granted the Student an interdistrict permit to enroll in the District for the upcoming 2015-2016 school year. The District agreed to enroll the Student in an elementary school in the District of the Complainant's choosing.

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District entered into the attached agreement to resolve the allegations in the complaint. In the agreement, the District confirmed the granting of the interdistrict permit to the Student. The District also agreed to: conduct a complete psychoeducational assessment of the Student in all areas of suspected disability and convene a IEP meeting (or, if the Student is to be found ineligible under IDEA, a Section 504 team meeting) to discuss the Student's eligibility and, if applicable, services and compensatory education; and provide targeted professional development to individuals involved in referring students for a Section 504 evaluation and about student eligibility for Section 504 services.

Because the District voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Section 504 or Title II. OCR will monitor the District's implementation of the agreement. 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. OCR is closing this complaint as of the date of this letter, and notifying the complainant simultaneously. 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 whether or not OCR finds a violation.

² According to the District, the Student was absent on 12 school days and tardy 3 times during the 2013-2014 school year.

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 cooperation in resolving this case. If you have any questions about this letter, please contact Naghmeh Ordikhani, OCR attorney, at (415) 486-5588.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure

Cc: Spencer Covert