



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

March 2, 2016

Mr. Charles Tracy
Superintendent
Hamilton Unified School District
620 Canal Street
Hamilton City, California 95951

(In reply, please refer to case no. 09-15-1517.)

Dear Superintendent Tracy:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Hamilton Unified School District (District). The Complainant¹ alleged that the District discriminated against the Student on the basis of disability. Specifically, OCR investigated whether the District failed to respond to the Complainant's May XX, 2015 request for a special education evaluation of the Student.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990, as amended (Title II). Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is, therefore, subject to the requirements of Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, we concluded that the District did violate Section 504 and Title II with regard to the issue OCR investigated. The legal standards, facts gathered, and the reasons for our determinations 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

¹ OCR notified the District of the identity of the Complainant and Student when the investigation began, and we are withholding their names from this letter to protect personal 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.

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 sections 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) of the 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. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner.² Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure. A procedure consistent with the IDEA is one means of meeting this requirement.

Factual Findings

The following facts are relevant to OCR's analysis.

- During the 2014-2015 school year, the Student was enrolled in XXX grade, and was not identified as a student with a disability; however, between March 2010 and June 2013, the Student was recognized as having a learning disability and an IEP was developed.
- The Student was exited from special education services in June 2013 because the Student's cognitive language issues were found to be related to English language acquisition issues rather than disability. The Student was provided with English language support services after her exit from special education.
- On May 22, 2015, the Complainant made a request to the District's Student Study Team (SST)/504 Site Coordinator (Coordinator) for the Student to be evaluated for special education services. After the Complainant made the special education evaluation request, the Coordinator responded that the first step would be for the District to review the Student's progress and schedule an SST meeting. The 2014-

² For further explanation, please see the Dear Colleague Letter entitled "English Learner Students and Limited English Parents" (jointly issued by OCR & the U.S. Department of Justice) (January 17, 2015).

2015 school year ended on June 5, 2015, and the Coordinator told the Complainant that an SST meeting would be held early in the new school year.

- The District advised OCR that procedural safeguards were not provided to the Complainant. However, the District stated that the Complainant was aware of her rights due to her prior experience with the special education process.
- Prior to the end of the 2014-2015 school year, the Coordinator reviewed the Student's academic progress and found that she maintained an overall GPA of 3.5.
- At the start of the 2015-2016 school year, the District Superintendent spoke to the Complainant about her concerns for the Student and scheduled an initial SST meeting on September XX, 2015, which the Complainant was unable to attend.
- An SST meeting was held on September XX, 2015, attended by the Complainant, the Coordinator, and the Student's teachers. An SST Plan was put into place that included a schedule to review the SST Plan in February 2016 to determine the effectiveness of the SST accommodations. These accommodations include: preferential seating, extra time for assignments when needed, small group and peer pairing work, individualized independent work. The Complainant agreed to these accommodations. The District did not provide the Complainant with a copy of procedural safeguards at this meeting, or at any time thereafter.
- The District's administrative regulation, AR 6164.6(a), entitled "Instruction – Identification and Education Under Section 504", provides that if, after receipt of a referral for eligibility (which can come from a variety of sources, including a parent/guardian) the principal or 504 Coordinator: "...determine that an evaluation is unnecessary, the principal or 504 Coordinator shall inform the parents/guardians in writing of this decision and of the procedural safeguards," as described in AR 6164.6(d).

Analysis

The Complainant expressly requested that the Student be evaluated for special education in May 2015, but the District did not evaluate the Student and instead held an SST meeting at the beginning of the next school year. By not assessing the Student as requested by the Complainant, the District took an action regarding the Student's identification and evaluation without providing the Complainant with the required procedural safeguards and in violation of its own policy, which also required that the Complainant be provided with such safeguards. The fact that the Complainant may have been aware of her procedural safeguards rights in the context of the Student's previous experience receiving special education in 2013 is irrelevant, as procedural safeguards must be provided when, as here, the District makes a decision about the identification, evaluation, and placement of a student potentially requiring a Section 504 plan or IEP. For these reasons, OCR found that the District was out of compliance with Section 504 and Title II with respect to this issue.

The District, without admitting to any violation of federal law, voluntarily agreed to enter into the enclosed Resolution Agreement with OCR to resolve the complaint. Under the terms of the Resolution Agreement, the District will draft and distribute an OCR approved guidance memorandum, which will address requests for evaluation under Section 504 or IDEA and the process for timely identification, evaluation, and provision of procedural safeguards. The District will conduct training for all District staff and administrators responsible for the identification, evaluation, and placement of students, and will also convene a meeting with the Complainant at which it will provide the Complainant with procedural safeguards and explain the difference in the protections provided to students and parents/guardians under Section 504 and the IDEA, as compared to the SST process.

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 the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. 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.

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.

When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Section 504 and Title II, and their implementing regulations at issue in the case. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR would like to thank you for your efforts and cooperation during the course of the investigation. If you have any questions about this letter, please contact David Howard at (415) 486-5523, or via email at david.howard@ed.gov.

Sincerely,
/s/
MaryBeth McLeod
Team Leader

Enclosure