



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

April 16, 2021
VIA ELECTRONIC MAIL

Lindsay Appell
Legal Fellow
Disability Rights California (DRC)
Legal Advocacy Unit
350 S. Bixel Street, Ste. 290
Los Angeles, California 90017
Lindsay.Appell@disabilityrightsca.org

(In reply, please refer to case no. 09-20-1416.)

Dear Legal Fellow Appell:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has reached a determination in the above-referenced complaint that you filed against the Chino Valley Unified School District (District). You (Complainant) alleged that the District discriminates against students based on disability. OCR initiated an investigation of the following issue:

Whether the District's policies, practices, and procedures regarding homicide risk threat assessments of students with disabilities violate Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination based on disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination based on disability by public entities. As a recipient of federal financial assistance and as a public education system, the District is subject to Section 504, Title II, and the implementing regulations.

OCR began investigating the complaint by reviewing documents provided by the Complainant and the District. OCR identified several compliance concerns based on this information. The District has signed a voluntary Resolution Agreement to fully resolve these concerns without a full investigation. This letter summarizes the relevant facts, the applicable legal standards, and OCR's determination.

Facts

The District provided OCR the several documents describing its homicide and suicide risk threat assessment process, including the following: Suicidal/Homicidal Thoughts Risk Assessment Flow Chart (Flow Chart), Threat Risk Screening Form (Screening Form), Columbia-Suicide Severity Rating Scale (Suicide Rating Scale), and CVUSD Re-entry Protocol (Re-entry Protocol).

The Flow Chart was most recently revised in May 2019 and states that first responder staff who conduct homicide and suicide risk threat screening include school psychologists, school nurses, and various types of counselors. After a referral, two trained staff members (one a first responder) are to conduct the threat screening and determine the level of concern using the threat screening form/packet. Based on the level of threat determined, personnel may contact the San Bernardino County Department of Behavioral Health's Community Crisis Response Team (CCRT) or the Behavior Intervention Plan (BIP) Office. After the threat screening, one of the trained staff members should contact the parent or guardian. If a student is taken for a mental health assessment or hospitalized, the school must hold a meeting prior to the student's return to develop a plan of support. In terms of documentation, the Flow Chart states, in part, that the threat screening packet is sent to the BIP Office and filed in a confidential way by the school site; a copy of the threat screening form is also to be provided to the parent or guardian. The Flow Chart contains no guidance concerning additional information that may need to be considered or documented when conducting homicide risk threat screenings or assessments of students with disabilities, including those who have an individualized education program (IEP) or Section 504 plan, or the role of the CCRT and/or a School Resource Officer (SRO) in conducting and documenting such assessments and providing that documentation to the District and parents or guardians.

The Screening Form was also last revised in May 2019 and records the following information: the student's name, grade, and school; the date and time of the referral; who made the referral and for what reason; the name of staff completing the screening; and the date and time that the District contacted the parent or guardian. The Screening Form also requests responses to the following: whether the student is presently asserting suicidal ideation; whether the student is having thoughts about hurting others; whether there has been a previous threat assessment or screening; what the student's motives and goals are; whether the student has a history of attempts or hospitalizations; and whether the student has a plan to harm themselves or others. The Screening Form does not solicit information concerning whether the student has a disability and, if so, the nature and functional limitations of the disability and implementation of any behavior-related requirements of a student's existing IEP or Section 504 Plan in response to the conduct triggering a homicide risk threat screening or assessment. In addition, the

Screening Form does not reflect that parents, guardians, and other knowledgeable members of the student's IEP or Section 504 team are given the opportunity to provide input regarding a student's disability-related behaviors and needs prior to the District reaching a homicide risk threat assessment determination.

The Screening Form has space to record whether various interventions were put into place as the result of the threat screening, including the following: hospitalization; resources provided to the parent or guardian; referral to a School Resource Officer (SRO); referral to the CCRT; school-based counseling; "program modification (e.g. 504, IEP)"; and other. The Screening Form includes a Release section for the parent/guardian to sign to verify, in part, that they have spoken to a member of the school's first responder staff concerning their child's suicide risk; it does not mention homicide risk. The Screening Form states that the parent/guardian understands that the school's first responder staff may follow up with them, their child, and the medical or health care provider to whom their child has been referred. It also lists local resources for emergency evaluations, counseling services, case management resources, call centers, and websites.

The Suicide Rating Scale was also revised in May 2019. Consistent with its title, the information solicited focuses solely on screening for suicide risk, not screening for homicide risk threat.

The Re-entry Protocol applies when a student returns to school after being hospitalized. The process requires a meeting on the first day of the student's return, prior to attending classes. Meeting participants include the principal or assistant principal, the school psychologist, the school nurse, the parent and student, the special education case carrier if the student is in special education, and a BIP counselor if the student is in special education and receives certain services. The meeting is to: verify outside counseling and medication; review and revise the student's safety plan; practice role playing; get a signed parent release of information for the school psychologist; discuss other community resources; and, for special education students, discuss possible referral for additional services or an updated psychoeducational assessment. There is no reference to a similar meeting required for a student determined to be a homicide risk threat but who is not hospitalized.

The District provided OCR with a BIP Office PowerPoint presentation updated in August 2020 covering a training for first responders on procedures for responding to student threats of suicide. It includes a review of the Flow Chart but all the remaining substantive content focusses on how to respond to signs of a student's risk of suicide, not how to conduct homicide risk threat assessments of students, including those with disabilities.

In addition to the written materials referenced above, the District informed OCR that it regularly holds meetings, including Section 504 and IEP meetings, to discuss student concerns, including suicidal/homicidal ideations, post-hospitalization re-entry, behavior concerns, and mental health concerns.

District administrators clarified that under the procedures in place during 2019-20 and 2020-21, District first responders only conduct homicide risk threat screenings; they do not conduct

homicide risk threat assessments or reach a determination that a student poses such a risk. Based on the level of concern identified during screening, first responders may refer the student to the CCRT or an SRO to conduct a homicide risk threat assessment and reach that determination. The administrators informed OCR that the first responders' level of concern during screening is measured by the Columbia Scale, which only solicits information concerning suicide risk; they confirmed that first responders do not have a parallel scale tool that solicits information concerning homicide risk. The administrators also stated that if first responders refer a student to the CCRT or an SRO for a homicide risk threat assessment the District receives no documentation describing the resulting assessment or determination.

The District reported that it conducted 20¹ homicide risk threat screenings of students with disabilities during the 2019-20 school year. At the beginning of the 2020-21 school year, prior to the start of distance learning² the District conducted one homicide risk threat screening of a student with disabilities. Students with disabilities screened during these school years ranged in grade level from Kindergarten to 11th grade. First responders referred two students during these years to the CCRT or an SRO, but it is unclear whether the referrals were for a homicide or a suicide risk threat assessment because the students were screened for both.

A review of documentation the District provided regarding students with disabilities screened for a homicide risk threat during these two school years revealed several examples of: students whose IEPs noted disability manifestations involving physical and/or verbal threatening behavior and related IEP requirements but documented no discussion of whether the homicide risk threat assessment process was appropriate for the student or how that process would be coordinated with IEP requirements; documentation of the homicide risk threat screening process that did not identify the student as having a disability, note the nature and manifestations of the disability, indicate that the screeners considered whether the conduct at issue was related to the disability, show that a direct threat standard was applied, or note that the screeners considered whether IEP requirements were followed in responding to the conduct; and no documentation indicating that an IEP meeting was triggered to discuss a the homicide risk threat screening, that the next regularly scheduled IEP meeting discussed that screening, or that additional services, supports, modifications, or aids were considered as a result.

Analysis

Issue

Whether the District's policies, practices, and procedures regarding homicide risk threat assessments of students with disabilities violate Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

¹ A number of the risk screenings were of the same students involved in more than one behavioral incident.

² The District reported that it is not conducting homicide risk threat screenings during distance learning.

Legal Standard

Under the Section 504 regulations, at 34 C.F.R. §§ 104.4(a), no qualified individual with a disability shall, based on disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance such as recipient school districts. The Title II regulations, at 28 C.F.R. §§ 35.130(a), create the same prohibition against disability-based discrimination by public entities such as public school districts. Under 34 C.F.R. § 104.4(b)(1)(i), (ii) and (iii), and 28 C.F.R. § 35.130(b)(1)(i), (ii) and (iii), recipient and public school districts, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, deny a qualified person with a disability an opportunity to participate, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others, or provide a qualified person with a disability with an aid, benefit or service that is not as effective as that provided to others.

The Title II regulations, at 28 C.F.R. § 35.130(b)(7), require public school districts to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination based on disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or would result in undue financial or administrative burdens. Whether or not a particular modification or service would fundamentally alter the program is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to an individual with a disability would result in additional cost does not of itself constitute an undue burden on the program.

The Title II regulations, at 28 C.F.R. § 35.139(a), state that public school districts are not required to permit an individual with a disability to participate in or benefit from its services, programs, or activities when that individual poses a direct threat to the health or safety of others. Section 35.139(b) provides that, in determining whether an individual qualifies as a direct threat to the health or safety of others, a public school district must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices or procedures or the provision of auxiliary aids or services will mitigate the risk.

The Section 504 regulations, at 34 C.F.R. § 104.33, require recipient 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 students without disabilities 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 IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. § 104.33(b)(2). OCR interprets the Title II regulations, at 28 C.F.R. §§

35.103(a) and 35.130(b)(1)(ii) and (iii), to require public school districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), require that in making placement decisions, a recipient school district must draw upon information from a variety of sources, ensure that the information is documented and carefully considered, and ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Determination

Upon review of the facts gathered thus far during the investigation, OCR identified several compliance concerns regarding the District's policies, practices, procedures, and related training regarding homicide risk threat assessments of students with disabilities.

The preliminary evidence gathered showed that the District's homicide risk threat procedures, forms, practices, and training materials do not reflect the process used and the standards applied to accurately screen and assess the homicide risk of students with disabilities, including disabilities impacting behavior, on an individualized basis. For example, the procedures, forms, practices, and training materials do not specify how the District, the CCRT, and/or the SRO: requests, considers, and documents information concerning whether a student referred for screening or assessment has a disability, the nature and functional limitations of the disability, and implementation of any behavior-related requirements of a student's existing IEP or Section 504 Plan in response to the conduct triggering the screening or assessment; applies the direct threat standard in determining whether a student with disability poses a homicide threat risk; provides an opportunity for parents and guardians and other knowledgeable members of the student's IEP or Section 504 team to provide input regarding a student's disability-related behaviors and needs prior to an assessment determination; or documents the basis for screening and assessment decisions and provides such documentation to the District and parents/guardians.

The facts obtained also indicate that the District's homicide risk threat assessment procedures, forms, practices, and training materials do not reflect coordination, as necessary, between this assessment process and its IEP and/or Section 504 team processes. For example, for students with disabilities that manifest in physical and/or verbal threatening conduct, there is no process stated or reflected in practice for IEP and Section 504 teams to proactively consider and determine the role of homicide risk threat assessments in appropriately responding to such conduct, should it occur, based on the student's individualized needs. In addition, there is no reference that a determination that a student with an existing IEP or Section 504 plan poses a homicide threat risk triggers an IEP or Section 504 team meeting, or that such information be considered during the student's next scheduled IEP or Section 504 team meeting, to ascertain whether the student needs additional supports or services.

Conclusion

OCR informed the District of its determination and it agreed to resolve the identified compliance concerns summarized above through a voluntary Resolution Agreement without a full investigation. Based on the commitments made in the enclosed Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the District concurrently. When fully implemented, the Resolution Agreement is intended to address the complaint issue. OCR will monitor the implementation of the Resolution Agreement until the District complies with the terms of the Resolution Agreement. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

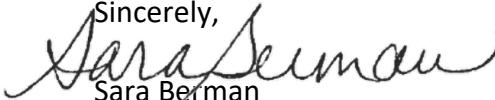
This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issue other than that addressed in this letter.

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.

Please be advised that the District may not harass, coerce, intimidate, retaliate, 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 a complaint with OCR alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your courtesy and cooperation during the investigation. If you have any questions regarding this letter, please contact me at (415) 486-5555.

Sincerely,

Sara Berman
Team Leader

Enclosure