



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

December 22, 2014

Julie Hall-Panameño
Director
Los Angeles Unified School District
Educational Equity Compliance Office
333 S. Beaudry Avenue 20th Fl.
Los Angeles, CA 90017

(In reply, please refer to case number 09-13-1007)

Dear Director Hall-Panameño:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Los Angeles Unified School District (District). The complaint alleged that the District discriminated against a student (Student) on the basis of disability.¹ Specifically, OCR investigated whether the District failed to provide the Student a free appropriate public education (FAPE) by failing to implement the Student's behavior intervention plan on June 6, 2012.²

OCR considered this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990 over disability discrimination complaints filed against public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR gathered evidence through interviews with the Complainant and District staff, and a review of documents provided by the Complainant and the District. OCR concluded that there was sufficient evidence to support a conclusion of noncompliance with respect to the issue investigated in this complaint. The applicable legal standards, the facts gathered, and the basis for OCR's determination are summarized below.

Legal Standard

¹ OCR notified the District of the Complainant's and the Student's identities when the investigation began. OCR is withholding their names from this letter to protect their privacy.

² OCR initially issued a resolution letter in this case on October 23, 2013. On December 24, 2013, OCR received a request from the Complainant for reconsideration of the resolution. OCR granted the Complainant's request based upon information provided by the Complainant. The OCR findings in this letter supersede the October 23, 2013 OCR letter.

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a 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.

OCR's investigation showed the following:

- During the 2011-12 school-year, the Student was in the eighth grade at a middle school in the District (School).
- The Student had been diagnosed with ADHD, PTSD, and multiple learning disabilities, for which the Student had an Individual Education Program (IEP) under the IDEA. The IEP in effect at the time of the events in this case was dated April 25, 2012.
- The IEP detailed the Student's disability-related behaviors that interfered with his education. The Student had a history of behavioral incidents. The Student's IEP included a Behavioral Intervention Plan (BIP). The Student also had a 1:1 Behavioral Aide (Aide) assigned.
- The BIP stated that when behavioral issues arose, staff were to 1) prompt the Student to switch to a replacement behavior; 2) remind the Student of self-regulating behavior; 3) provide positive discussion with the Student at the conclusion of the behavior; and 4) apply any necessary or further classroom/school consequence.
- On June X, 2012, an incident (Incident) occurred between the Student and a long term Substitute Teacher during a special day class at the School. According to

witness statements, the Student was riding a scooter before the beginning of the class period and was told to stop by the Substitute Teacher. The Substitute Teacher did not implement the behavior strategies in the Student's BIP. The Student became argumentative and a conflict developed between the Student and the Substitute Teacher, during which the Substitute Teacher attempted to make the Student leave the classroom by grabbing his backpack to take it to the Dean's office. At some point, according to witness statements, when the Substitute Teacher returned to the classroom the Student pushed or made some physical contact with her; the Substitute Teacher then struck the Student in the torso at least once.

- On or about June X, 2012, the District conducted an investigation regarding the Incident. The District's investigation consisted of interviewing and collecting witness statements from students, support staff and the Substitute Teacher. The District informed OCR that it took no disciplinary action against the Substitute Teacher because the investigation showed that she was defending herself against a physical attack by the Student.³
- The District acknowledged that the Substitute Teacher was not aware of the Student's behavior issues or the provisions of his BIP.
- The District stated that its policy is to have student IEPs and behavioral plans available for substitute teachers to review. However, the District does not have a written policy describing how schools should ensure that this occurs. Interviews with administrators indicated that the School did not have a consistent method to ensure such documents are actually reviewed by substitute teachers.
- On June XX, 2012, the Student was sent to another school in the District for the remainder of the school-year, as a result of the Incident.

Analysis

OCR concluded that the actions taken by the Substitute Teacher to control the Student's behavior during the June X, 2012 incident were not consistent with the Student's IEP or BIP. The Substitute Teacher did not have any knowledge of the provisions of Student's BIP or methods to address the Student's disability-related behaviors that were appropriate to his individual needs. Therefore, OCR concluded that the District violated Section 504 and the regulations by failing to provide him with a FAPE. OCR would not expect that every substitute teacher be trained in advance on each detail of every student's IEP. However, particularly in a case such as this, involving a long-term substitute in a special day classroom that contains students with behavioral problems, the District must have some consistent method of ensuring that substitutes have sufficient information to implement the students' IEPs and provide

³ OCR notes that California has mandatory reporting requirements for suspected incidences of abuse of a minor. Review of the records show that the District referred the Substitute Teacher's actions for further disposition under that process.

them with FAPE, including implementing appropriate behavior strategies. The District did not have such a consistent process in place.

OCR notified the District of its conclusions described above, and without admitting to any violation of law, the District agreed to enter into a signed agreement that, when fully implemented, will resolve the issues in this complaint. The agreement requires that the District: 1) develop and implement a guidance document to ensure that substitute teachers have sufficient familiarity with the provisions of the IEPs and Section 504 Plans of students with disabilities prior to teaching them; 2) provide training to appropriate District officials regarding the guidance; and 3) provide compensatory educational services to the Student for the instructional time lost as a result of the inappropriate handling of the incident. The signed agreement is enclosed with this letter. 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.

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 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.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

OCR thanks you and your staff, especially Victoria Badmus-Wellington, for your cooperation and assistance in resolving this matter. If you have any questions, please contact G. Anthony Brown, Civil Rights Attorney, at (415) 486-5547.

Sincerely,

/s/

James Wood
Team Leader

Enclosure

cc: Victoria Badmus-Wellington