



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

December 22, 2014

John R. Porter Jr.
Superintendent
Franklin-McKinley School District
645 Wool Creek Drive
San Jose, California 95112

(In reply, please refer to OCR case no. 09-14-1199.)

Dear Superintendent Porter:

By letters dated April 3 and 21, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), notified you it had accepted a complaint¹ against Franklin-McKinley School District (District) alleging discrimination based on disability and national origin.

As explained below, prior to reaching findings of fact or conclusions of law in this matter, OCR accepted a resolution agreement from the District that resolves the complaint allegations. As such, OCR is closing the investigation of this complaint as of the date of this letter.

OCR enforces Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, and national origin, and Section 504 of the Rehabilitation Act of 1973, which prohibit 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 educational entity, and is subject to the requirements of Title VI and Section 504.

Pursuant to section 302 of OCR's *Case Processing Manual (CPM)*, a complaint may be resolved at any time before the conclusion of an investigation if the recipient expresses an interest in resolving the complaint. After OCR began its investigation, the District offered to proactively address the complaint allegations through a voluntary Resolution Agreement Reached During an Investigation (Agreement). The District, without admitting any violation of the law, signed the enclosed Agreement. The Agreement will fully address the issue raised in this complaint.

¹ OCR informed the District of the complainant's identity when the investigation began. We are withholding the complainant's name from this letter to protect her privacy.

The Agreement requires the District to revise, as needed, its Section 504 policies and procedures to ensure full compliance with 34 C.F.R. §§ 104.36, 104.7 and related provisions, including provisions governing grievance procedures and student/parent rights; to post information about Section 504 in a prominent, easily accessible space on the District's and each school's websites; and to provide training to appropriate administrators regarding the new Section 504 policy and procedures.

Concurrent with the resolution of this complaint, the District entered into another voluntary agreement to resolve OCR case no. 09-13-1056; in that case, the District agreed to develop written procedures for the provision of oral interpretation and written translation to limited English proficient parents/guardians and to provide mandatory training for all school principals on the new procedures. The implementation of the agreement in OCR case no. 09-13-1056 will address one of the allegations in this complaint about the District's communication with limited English proficient parents.

OCR has determined that the actions taken by the District and its commitments expressed in the enclosed Agreement, when implemented, will resolve the issues in this complaint. OCR will monitor the implementation of the enclosed Agreement and may reopen the investigation if the District does not implement the provisions of the Agreement. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This concludes the 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 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. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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If you have any questions, please contact David Howard at (415) 486-5523 or Jenny Moon at (415) 486-5338.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Enclosure

Cc: Randy Parent, Esq.