



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

November 17, 2014

Dr. George Mannon
Superintendent
Torrance Unified School District
2335 Plaza Del Amo
Torrance, California 90509

(In reply, please refer to case no. 09-14-1361.)

Dear Dr. Mannon:

On May 22, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Torrance Unified School District (Recipient). The Complainant alleged that her daughter (Student) was subjected to discrimination on the basis of disability.¹ Specifically, OCR investigated whether the District (1) failed to respond adequately to an internal complaint that the Student had been subjected to disability-based harassment by an employee; and (2) failed to provide the Student with a free, appropriate public education by failing to implement the Student's Individualized Education Program (IEP).

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its 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 under Title II of the Americans with Disabilities Act of 1990 (Title II) over disability discrimination complaints filed against public educational entities. The District receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

Under Article III, Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the allegation through a voluntary resolution agreement (Resolution Agreement). This letter summarizes the applicable legal standards and how the complaint was resolved.

¹ OCR previously notified the District of the names of the Complainant and Student and is withholding their names in this letter to protect their privacy.

I. 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.

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.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee, the school district is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough and effective. What constitutes a reasonable response to harassment will differ depending upon circumstances. However, in all cases the response must be tailored to stop the harassment, eliminate the hostile environment if one has been created, and address the problems experienced by the student who was harassed. School district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

II. Resolution

The District, without admitting any violation of federal law, voluntarily agreed to enter into the attached Resolution Agreement with OCR to resolve the complaint. The Resolution Agreement requires the District conduct an investigation of the Complainant's internal disability discrimination complaint using the appropriate legal and investigatory standards under Section 504 and provide OCR with a summary of the investigative report, determination and remedial action, if applicable. The Resolution Agreement also requires the District provide the Complainant with reimbursement for a specified amount of compensatory education.²

OCR has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, OCR is closing this complaint as of the date of this letter. OCR will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the District does not comply with the Resolution Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

² OCR notes that the Resolution Agreement requires the Student's compensatory education provision be fully implemented by December 31, 2014. OCR recognizes that this deadline may require adjustment based on the time required for the District and Complainant to find a mutually agreeable service provider and/or the District's holiday schedule. OCR will work with the District to resolve such issues if they arise.

OCR would like to thank the District for its cooperation during this investigation. If you have any questions regarding this letter, please contact OCR attorney Kendra Fox-Davis at (415) 486-5418 or kendra.foxdavis@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Sharon Watt, Esq.