

Resolution Agreement
Tehachapi Unified School District
Case Number 09-14-1498

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation into a complaint filed against the Tehachapi Unified School District (the “District”) by the Complainant which alleged disability harassment of a student in the District (the “Student”) by a District employee and a failure of the District to respond promptly and equitably to a complaint of discrimination filed by the Complainant (the “Complaint”) against the District.

The District has cooperated with the OCR investigation, fully, in good faith and in a timely manner. Based on OCR’s investigation, OCR concluded that the District’s investigation was not entirely impartial, and its conclusion that the harassment allegation was unfounded did not make a determination about whether harassment occurred that was severe, pervasive, or persistent enough to have denied or limited the Student’s ability to participate in or benefit from the District’s program. OCR also found that while the District did communicate the outcome of the Complaint to the Complainant, it did not include in its decision the findings of fact based on the evidence gathered, the conclusion(s) of law, or the rationale for its determination.

The District disagrees with and disputes OCR’s findings and conclusions. To resolve this dispute, OCR and the District voluntarily agree to resolve OCR Case No. 09-14-1498 pursuant to the Terms of the Agreement described below. Although the District enters into this Agreement voluntarily, it acknowledges that the Agreement is binding, and that the District will be bound by its terms so long as it is in effect, regardless of changes in the District’s administration, including the Superintendent or the Board of Trustees.

Terms

In order to resolve this matter, the District agrees to (i) re-open its investigation of the Complaint; (ii) re-interview the three classroom aides who had submitted written statements in conjunction with the District’s original investigation; (iii) revise the District’s investigative report to include any new information that may be provided by the three classroom aides; (iv) revise the District’s investigative report to include the findings of fact, the conclusions of law, the disposition of the complaint, and the rationale for such disposition; (v) follow up if any of the three classroom aides provide additional information; (vi) provide a copy of the new investigative report to the Complainant; and (vii) investigate any future allegations of disability based harassment by a school employee against a student utilizing the investigative process set forth in the District’s Board Policy 1312.3 and this Agreement.

Additional Terms

- A. The District’s investigation of the allegation of disability discrimination regarding the May XX, 2014 incident will be re-opened and completed within 60 calendar days of the date of this Agreement.

- 1) The District will ensure that thorough and impartial individual interviews are conducted with each of the three classroom aides who originally submitted written statements, as well as with any other available and relevant witnesses who have not yet been interviewed.
- 2) The District will determine whether disability based harassment occurred, applying a preponderance of the evidence standard whether the allegation is more likely to be true than not, by evaluating whether disability harassment occurred that was sufficiently severe, pervasive, or persistent to have denied or limited the Student's ability to participate in or benefit from the District's program.
- 3) The District will ensure that it communicates the outcome of the complaint to the Complainant. The written decision will include:
 - a. Findings of fact based on the evidence gathered. In reaching a factual finding, the following factors may be taken into account:
 - Statements made by any witnesses;
 - The relative credibility of the individuals involved;
 - How the complaining individual reacted to the incident;
 - Any documentary or other evidence relating to the alleged conduct;
 - Past instances of similar conduct by any alleged offenders; and
 - Past false allegations made by the complainant.
 - b. The conclusion(s) of law.
 - c. Disposition of the complaint.
 - d. Rationale for such disposition.

For complaints of retaliation or unlawful discrimination, including discriminatory harassment, the disposition of the complaint shall include a determination for each allegation as to whether retaliation or unlawful discrimination has occurred, applying a preponderance of the evidence standards. If, applying this standard, the evidence establishes that it is more likely than not that the discrimination occurred, then the complaint will be resolved as though the conduct investigated did, in fact, occur.

The determination of whether a hostile environment exists may involve consideration of the following:

- How the misconduct affected one or more students' education;
- The type, frequency, and duration of the misconduct;
- The relationship between the alleged victim(s) and offender(s);
- The number of persons engaged in the conduct and at whom the conduct

- was directed;
 - The size of the school, location of the incidents, and context in which they occurred; and
 - Other incidents at the school involving different individuals.
- e. Corrective action(s), including any actions that have been taken or will be taken to address the allegations in the complaint.

For complaints of unlawful discrimination, including discriminatory harassment, the corrective action may include:

- The corrective actions imposed on the individual found to have engaged in the conduct that relate directly to the subject of the complaint.
 - Individual remedies offered or provided to the subject of the complaint.
 - Systemic measures the school has taken to eliminate a hostile environment and prevent recurrence.
- f. Notice of the complainant's right to appeal the district's decision within 15 calendar days to the CDE and procedures to be followed for initiating such an appeal.

The decision may also include follow-up procedures to prevent recurrence or retaliation and for reporting any subsequent problems.

For complaints alleging unlawful discrimination, including discriminatory harassment, the decision shall also include a notice that: Complaints alleging discrimination based on race, color, national origin, sex, gender, disability, or age may also be filed with the U.S. Department of Education, Office for Civil Rights at www.ed.gov/ocr within 180 days of the alleged discrimination.

- B. Within 65 calendar days of the date of this Agreement and prior to its issuance to the Complainant, the District will provide OCR with a copy of its (proposed) investigative report and a copy of all supporting documentary evidence (including another copy of the documentary evidence previously provided to OCR). OCR and the District will communicate about the District's investigatory process, and as appropriate will provide feedback to the District. After OCR approves the District's report, the District will finalize its report and issue a copy to the Complainant. The District will confirm that the Complainant has been issued a copy within 5 calendar days of its issuance.
- C. The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the District understands that, during the monitoring of this Agreement, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations

implementing Section 504 and Title II, at 34 C.F.R. §§ 104.4, 104.7, and 28 C.F.R. §§ 35.130, 35.107, respectively, which were at issue in this case.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II, at 34 C.F.R. §§ 104.4, 104.7, and 28 C.F.R. §§ 35.130, 35.107, respectively, which were at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Approved and agreed to on behalf of Tehachapi Unified School District.

_____/s/_____
Superintendent (or designee)

July 13, 2015
Date