



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

November 20, 2015

Alex Cherniss, Ed.D
Superintendent of Schools
San Marino Unified School District
1665 West Drive
San Marino, California 91108

(In reply, please refer to case number 09-14-1522.)

Dear Superintendent Cherniss:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the San Marino Unified School District (District). The complaint alleged that the District discriminated against students on the basis of disability in the inter-district transfer process by having a policy stating that transfer students, including special education students, could be sent back to their home school if they incurred additional costs for the District.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and their respective implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and their respective implementing regulations.

OCR gathered evidence through correspondence with the Complainant and a review of records and documents provided by the Complainant and the District. OCR concluded there was sufficient evidence of non-compliance. The Recipient committed to a Resolution Agreement (RA), which when fully implemented, is intended to resolve the issues raised in this matter. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Legal Standards

Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iii), school districts, in providing any aid, benefit or service, may not 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.

In addition, the Title II regulations, at 28 C.F.R. §35.130(b)(7), require public entities to make reasonable modifications in policies, practices, or procedures when the modifications are

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necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Whether or not a particular modification or service would fundamentally alter the program or constitute an undue burden is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to a disabled individual would result in additional cost does not, in and of itself, constitute an undue burden on the program.

Findings

- Under California state law, there are a number of mechanisms which permit students to attend a school district other than the district in which they reside. Pursuant to Education Code section 46600, the District has inter-district attendance agreements with other school districts in its surrounding area. These agreements contain provisions related to state funding based on enrollment size. The agreements provide that the district of residence will be charged a portion of special education costs by the district of attendance, and will be responsible for any deficits passed on by the State to the district of attendance due to inadequate special education funding.
- At the time the complaint was filed, pursuant to Education Code section 46600, the District had adopted an inter-district transfer policy (BP 5117). The policy could be found at the District's central office and was described on the District website at www.smusd.us/parents_and_students/enrollement/interdistrict.jsp; however neither BP 5117 nor the Administrative Regulation were published online. The policy as described on the District's website stated, in pertinent part:

Students will not be admitted if their attendance will incur excess costs on the District. Should the student later be identified as needing additional services, the student will be transferred back to his/her district of residency. This includes Special Education Services.
- The District's BP 5117 stated:

A permit may be revoked immediately in cases when the student incurs costs in excess of income received by the state when reimbursement for these costs is denied by the district of residence.
- The District stated and provided documentation showing that during the 2014-2015 school year, 306 students were enrolled on inter-district transfer permits. Of the 306 inter-district transfer students, 49 received special education services.
- The District stated and provided documentation showing that in the last three (3) academic years, no special education student's inter-district transfer was denied or revoked based on excess costs.

Resolution

OCR determined that the preponderance of evidence showed the District was out of compliance with Section 504 and Title II with regard to the allegation investigated in this case. The

evidence showed that on its face, the District's inter-district transfer policy was discriminatory on the basis of disability as it explicitly allowed for the immediate and automatic revocation of an inter-district transfer based on cost associated with serving the needs of students with disabilities that exceeded the income receive by the state. While cost may be considered during the inter-district transfer process, the fact that providing a service to a disabled individual would result in some additional cost beyond state income, or, as described on the District's website, would incur "excess costs" does not by itself constitute an undue burden warranting the automatic denial or revocation of an inter-district transfer.

The District committed to taking action to address the areas of non-compliance identified in this letter. On November 10, 2015, the District signed a Resolution Agreement (RA) to resolve the issues in this case by revising its inter-district transfer policy, publishing the corresponding board policy and administrative regulation online, and notifying administrators and staff of the policy revisions.

Conclusion

Based on the commitments the District made in the RA described above, OCR determined that it is appropriate to close the investigative phase of this case. OCR is closing this complaint as of the date of this letter. This 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. OCR is informing the Complainant of the complaint resolution by concurrent letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. OCR will monitor the implementation of the agreement until the District is in compliance with the statute(s) and regulations at issue in the case.

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 Recipient 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 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.

OCR appreciates the cooperation extended by the Recipient during the complaint resolution process. OCR would specifically like to thank Dr. Gary McGuigan, Assistant Superintendent of Instruction, for his responsiveness and assistance during this investigation. If you have any questions, please contact Rhonda Ngom, Civil Rights Attorney at (415) 486-5540.

Sincerely,

/s/

James M. Wood
Team Leader

Cc: Gary McGuigan, Assistant Superintendent of Instruction
Attachment: Resolution Agreement