



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

August 28, 2015

Ron Severson
Superintendent
Roseville Joint Union High School District
1750 Cirby Way
Roseville, California 95661

(In reply, please refer to case no. 09-15-1210.)

Dear Superintendent Severson:

On March 3, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Roseville Joint Union High School District (Recipient). OCR investigated allegations of discrimination on the basis of disability.¹ Specifically, OCR investigated whether:

1. On October XX, 2014 the Student was subjected to harassment by a school police officer based on disability, and that the Recipient failed to respond appropriately and effectively to notice of the harassment;
2. The Recipient is attempting to change Student's current placement without following adequate evaluation and placement procedures; and,
3. Since February XX, 2015, the Student has been subjected to harassment by Recipient employees based on disability.

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 Recipient 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 Recipient expressed interest in resolving the allegations through a voluntary resolution agreement (Agreement). This letter summarizes the applicable legal standards and how the complaint was resolved.

¹ OCR informed the Recipient of the Student's identity in our letter notifying you of the complaint. We are withholding her name here to protect her privacy.

I. Legal Standards

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.

Under the Section 504, Title II and the regulations, once a district has notice of possible harassment of a student by a third party based on disability that took place in a district program, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the third party, but rather for its own discrimination in failing to respond adequately. A school district may violate Section 504, Title II, and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action that is within its authority. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

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 the circumstances. However, in all cases the district must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include issuance of notice that disability discrimination

is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7[b] and 28 C.F.R. §35.107[b]). The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §104.7[a] and 28 C.F.R. §35.107[a]).

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, and employees, including where to file complaints; application of the procedure to complaints alleging harassment by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

The Section 504 regulations, at 34 C.F.R. §104.33, also require public schools 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 34 C.F.R. §§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.

Additionally, 34 C.F.R. §104.35 requires that a recipient establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education services. According to 34 C.F.R. §104.35(b), the evaluation materials must have been validated for the specific purpose for which they are used, administered by trained personnel in accordance with the instructions provided, and tailored to assess specific areas of educational need. Recipients must also administer tests for students with impaired sensory, manual, or speaking skills that best ensure that the test results reflect the student's aptitude or achievement level, or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills. Additionally, 34 C.F.R. §104.35(d) requires recipients to establish periodic reevaluations of students who have been provided special education services, following the same procedures noted above.

II. Resolution

The Recipient, without admitting any violation of federal law, voluntarily agreed to enter into the attached Agreement with OCR to resolve the complaint. The Agreement requires the Recipient to draft written guidance and conduct training on the Recipient's responsibilities with respect to investigating complaints of harassment involving students with disabilities. The Recipient must also conduct an investigation in accordance with its policies and procedures on the Complainant's allegations of disability based harassment.

OCR has determined that, once implemented, the 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 Agreement and may reopen the investigation if the Recipient does not comply with the Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Recipient'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 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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, this document and related records may be released upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR thanks the Recipient for its cooperation and assistance in resolving this complaint. If you have any questions regarding this letter, please contact Abony Alexander, Civil Rights Attorney, at (415) 486-5590 or Abony.Alexander@ed.gov.

Sincerely,
/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Craig Garabedian, Director of Special Education (by email only)