



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

January 12, 2016

Mr. Edward Lucero
Acting Superintendent
Parlier Unified School District
900 Newmark Avenue
Parlier, California 93648-2034

(In reply, please refer to case no. 09-15-1388.)

Dear Acting Superintendent Lucero:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its resolution of the above referenced complaint filed against the Parlier Unified School District. OCR accepted for investigation the following issue:

Whether the District failed to provide the Complainant¹ with a disability-related accommodation to allow him an equal opportunity to participate in a Board of Trustees (Board) meeting on April 25, 2015.

OCR initiated its investigation of the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the 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 the implementing regulations.

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.

¹ OCR identified the Complainant at the onset of the resolution process. We are withholding his name from this letter to protect his privacy.

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 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.

OCR began its investigation by interviewing the Complainant, and by reviewing documents provided by the Complainant and the District.

The Complainant filed a previous complaint with OCR (09-10-1368) concerning the provision of disability-related accommodations to individuals participating in Board meetings. The resolution of that complaint resulted in several amended Board Bylaws (BB).

BB 9323, Meeting Conduct, states that an individual who requires disability-related accommodations, modifications, or auxiliary aids and services in order to participate in a Board meeting should contact the Superintendent's Assistant or designee at least 24 hours prior to the Board meeting. If the individual contacts the Assistant after the deadline, the District shall do its best to provide the accommodations or modifications. If, however, the District cannot provide the requested accommodation or modification due to lack of time, the Assistant or designee will notify the Board of the situation and the individual will be allowed to address the Board at the next meeting when the accommodations or modifications can be provided. If a request is denied, the individual may appeal to the Superintendent, who reaches a final determination on the request.

BB 9322, Agenda/Meeting Materials, states that the Board agenda shall specify that an individual who requires disability-related accommodations or modifications in order to participate in a Board meeting should contact the Superintendent's Assistant at least 24 hours prior to the meeting. BB 9320, Meetings and Notices, states that in order to help ensure the participation of individuals with disabilities at Board meetings, the Superintendent or designee shall provide appropriate disability-related accommodations or modifications upon request in accordance with the Americans with Disabilities Act.

The Complainant was formerly employed by the District. He now heads up a Parent Resource Center (Center) as a Coordinator/Consultant for the District. The Center provides services such as: support services for teenaged mothers, services for English learners, computer training, days of service, Healthcare Services, support for parents, and food services. It partners with various other organizations and agencies.

The Complainant has disabling conditions that limit his mobility. The Complainant told OCR that it is difficult for him physically to sit and wait for hours at a time. The Complainant reported to OCR that he called the Superintendent's Assistant during the week of April 19, 2015, regarding his placement on the agenda for the Board's April meeting. The Complainant was to report on the Center's 2014-15 activities and request to have his contract approved for 2015-16. He told OCR that he requested, due to his disabilities, to be moved to an early time

on the Open Session agenda because when he was placed on a previous Board meeting agenda it took over four hours before he could speak. The Complainant stated that the Assistant told him that she would ask the Superintendent to place him earlier on the agenda for the April meeting. The Complainant reported to OCR that neither his request nor her response was in writing. The Complainant told OCR that when he arrived at the Board meeting on April 25, 2015, he learned that he was placed at almost the very end of the Open Session agenda. As a result, he had to wait approximately four hours to speak.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint. On October 5, 2015, the District's representative expressed an interest in resolving this complaint without a full investigation. The District thereafter entered into the enclosed Resolution Agreement. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District complied or failed to comply with Section 504 or Title II with respect to the issue raised by this complaint.

Through the Resolution Agreement, the District agreed to acknowledge to the Complainant in writing its approval of his disability-related accommodation request that, should he be placed on the agenda with an agenda item to address the District Board of Trustees during future meeting, his agenda item(s) would be scheduled at or near the beginning of the Open Session agenda. The District further agreed to develop and implement a system to document and respond to all requests for disability related accommodations, modifications, or auxiliary aids and services under Board Bylaws 9322 and 9323.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with 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), and 28 C.F.R. §35.130(b)(7). OCR is informing the Complainant of the complaint resolution by concurrent letter. Note that the Complainant may file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's investigative process 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 which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR appreciates the courtesy and cooperation extended by you and your staff during the complaint resolution process. If you have any questions, please contact Julie Baenziger at (415) 486-5502, or me at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Attachment

Cc: Benjamin Rosenbaum, Esq.
Lozano Smith