



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

November 30, 2016

Scott Turnbull
Superintendent
Soquel Unified School District
620 Monterey Avenue
Capitola, CA 95010

(In reply, please refer to case no. 09-16-1397.)

Dear Superintendent Turnbull:

On July 7, 2016, the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) notified you that it received the above-referenced complaint filed against the Soquel Unified School District (District). The Complainant alleged that his daughter (Student)¹ was subjected to harassment by other students based on disability, and the District failed to respond appropriately and effectively to notice of the harassment.

OCR accepted the complaint for resolution under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II). Section 504 and that statute's implementing regulations at 34 CFR Part 104 prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. Title II and that statute's implementing regulations at 28 CFR Part 35 prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from this Department and as a public entity, the District is required to comply with these federal civil rights laws.

Under Section 302 of OCR's Complaint Processing Manual², a complaint may be resolved at any time when, before the conclusion of an investigation, a district expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR that it was interested in resolving the complaint in this manner, and OCR agreed that a resolution through this means was appropriate. OCR and the District entered into the enclosed voluntary Resolution Agreement (Agreement) to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 and Title II and their implementing regulations.

¹ OCR previously informed the District of the identities of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

² The Case Processing Manual is available on line at: <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

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, Title II and the regulations 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 Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, 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. 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 promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, 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.

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

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, parents of elementary and secondary

school 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.

Under Section 504, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP or Section 504 team of a student with a disability to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving a FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior.

If the school suspects the student's needs have changed, the IEP or Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the burden on the student with the disability to avoid or handle the bullying. In addition, when considering a change of placement, schools must continue to ensure that Section 504 services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

Findings of Fact:

- The Student was in the 5th grade during the 2015-16 school year. She is diagnosed with an orthopedic impairment caused by a rare chromosomal disorder and has an Individualized Education Program (IEP). During the 2015-16 school year, she attended an elementary school in the District and is now attending a middle school in the District.
- On April XX, 2016, the Student wrote a typed apology letter to her Teacher and signed it. (The Student's mother said it was dictated by the Student). She wrote, "Dear [Teacher], I'm sorry for drawing on your rug and spilling the pushpins and making a silly voice and trying to rip [a book], [...]" It was signed with the Student's name.
- On the morning of May X, 2016, the Student's mother arrived at the School with the Student and discovered that someone had posted photocopies around the school of the signed apology letter that the Student wrote to her Teacher. The Complainant stated that the Student is known by other students at the school as being a student with a disability because she has a visible physical disability.
- The Principal received a text picture of the letter at 8:52 AM that morning from a staff member stating, "[The Student's mother] found this posted in several spots around school today. She has left with [the Student] and will not be back until there is an

apology. She is very upset.” The Student’s mother took the Student home that morning stating that she did not feel it was safe for her. The Principal called the Student’s mother that morning at 10:30.

- That day the Principal addressed the Student’s mother’s initial concerns by:
 - Speaking to the students who handle the recycling bin where the letter had been placed (no one confessed);
 - Speaking to the 4th and 5th grade classes about the inappropriateness of the behavior and asking anyone who had information to come speak to her;
 - Calling the Superintendent (who has since retired).
- Over the next few days, the Principal had additional telephone and in-person meetings with the Complainant and the Student’s mother to discuss the Student’s return to School.
- On May XXX, the Principal sent the Complainant and the Student’s mother a link to the District’s board policy on bullying and noted that the School’s Student Handbook also had the policy. She wrote in the email: “I have spoken with [the Student’s Teacher], students, all staff members and several parents. I am also attaching a detailed list of what I have done to address this situation. She noted that she would be speaking with the Student’s aide when she returned. The aide had not been at the school during the events regarding the posting of the picture. She also stated that she spoke with the Superintendent who told her that he did not believe that the Student was “targeted due to her disability.”
- On May XX, 2016, the Student’s mother and the Principal spoke and agreed to a set of remedies for the Student’s return which in particular included:
 - The School would conduct a daily morning campus sweep for any “malicious items, writings, postings etc.” before students arrive;
 - The School would provide a “Low Key” return for the Student to reduce adding anxiety to her return;
 - The Principal would continue to “look for information” as to who posted the letter, and would tell the Student’s mother and the Complainant about new information;
 - The School would print the up to date bullying policy in the Student Handbook/Planner;
 - The School would provide conflict resolution training and anti-bullying training for staff and students, with future discussion of changing the current training to include “more positive inclusion of students with special needs”;
 - The Principal would schedule a meeting between the Student’s mother, Complainant, and the Superintendent to discuss District level changes versus School changes, such as “clear and consistent guidelines and procedures” at the District and site level for responses to “bullying activity and hate crimes”; and
 - The Student’s mother requested that additional anti-bullying information be placed around the School, and the Principal stated that she would have to check with the Superintendent regarding this request.

- The Complainant told OCR that the agreed upon actions listed above were either implemented or in the process of being implemented.
- The Student returned to School on May XXXX, after missing nine school days.
- The Principal, Complainant, the Student's mother, and the Superintendent met on May XXXX, during which the Superintendent informed the Complainant and the Student's mother that he did not feel that the Student had been targeted due to her disability and declined to place additional anti-bullying information around the School. The Principal informed OCR that the meeting "did not go well" and that the Complainant and the Student's mother "did not leave feeling that the District had supported them."
- In a May XXXX email, the Principal asked the Complainant and the Student's mother to have another meeting to "clear up any requests you might still have," stating that she recognized that the meeting from May XXXX had not gone as well as "we had all hoped for." She stated that they could come up with a list and an agreement and that "I want you to know that I am here to help and want you both to know I am hearing your requests."
- The Superintendent retired June 30th and a new Superintendent started on July 1st. The new Superintendent told OCR he was not informed of the incident or of the Complainant's complaint. Upon learning of the complaint in July 2016, the new Superintendent contacted the School Principal, pulled email communications, and interviewed the Principal. He then sent prior emails and communications between the Complainant and the District and had the Principal send updated information on the current status of their response.
- The new Superintendent contacted the Complainant the last week of July and met with the Complainant and the Student's mother on August XXXX.
- After the August XXXX meeting, the new Superintendent sent the Complainant and the Student's mother a letter on August XX, 2016 summarizing the meeting, stating that he would:
 - Ensure that the District's Board Policy on Bullying is distributed in each school in the Parent Handbook (The New Superintendent told OCR that this had already been done this fall.);
 - Research best practices/programs for student conflict resolution, including looking into a possible project run by a friend of the Student's mother;
 - Continue "digging" at the various schools for anti-bullying procedures across the District;
 - Check in with the Complainant and the Student's mother at the beginning of October to see how things are "progressing from [the Complainant and the Student's mother's] vantage point." [OCR confirmed that the Superintendent and Complainant had this check in conversation.]

- The District's policy and grievance procedure for addressing discrimination and harassment complaints can be found in the District's Uniform Complaint Procedures (UCP) (Board policy and Administrative regulation 1312.3). The UCP is located on the District's website. According to the policy, the UCP is the procedure to be used to investigate and resolve any complaint alleging the occurrence of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) for various protected categories, including disability. The UCP requires that an investigation be conducted and a written notice of outcome be provided to complainants.

Analysis:

When OCR examines an allegation of student to student disability-based harassment, OCR examines whether the student was subjected to disability-based conduct that created a hostile environment for the student. In determining whether a hostile environment based on disability has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the district's program. OCR examines all the circumstances, including for example, the type of conduct, the frequency and severity of the conduct, and the nature of the student's disability.

In this case, OCR found that on May X, 2016, the Student's mother discovered that someone had posted an apology letter that the Student had written to a Teacher in various locations throughout the School. The Complainant and the Student's mother told OCR that they believed that the action was taken to bully or harass the Student on the basis of the Student's disability because the posted letter had her name on it, and the Student is known by other students as a student with a disability because she has a visible physical disability. OCR did not receive any additional evidence from the Complainant that the Student had previously been targeted by other students or singled out on the basis of disability. The Complainant and Student's mother removed the Student from the School for 9 days as a result of the incident, stating that the School was not safe for the Student.

Once the District had notice of possible disability-based harassment between students, it was responsible for determining what occurred and responding appropriately. The facts gathered to date show that the Principal was made aware of the incident on the morning that the posted letters were discovered and was informed that the Student's mother was upset and would not return the Student to the School until there was an apology. OCR found that the District did not treat the parent's concern about the incident as a discrimination complaint, which would have triggered the use of the District's grievance process, the UCP. The District did not make any findings about the allegation of discrimination on the basis of disability and did not provide the parents with the written notice of outcome required by the UCP.

However, the facts gathered to date also show that on the same day that the Principal learned of the incident, the Principal contacted the Student's mother and acted

expeditiously to look into and address some of the underlying concerns, including by meeting with the recycling bin students, talking with the 4th and 5th grade students about appropriate conduct, asking the 4th and 5th grade students to come speak to her if any of them had information about the incident, and calling the Superintendent. Three days later on May XXX, the Principal also sent the Complainant and the Student's mother a link to the District's bullying policy and detailed the actions she had taken since the discovery of the posted letter. On May XX, the Student's mother and Principal spoke and agreed to additional actions that would be taken for the Student's return on May XX, the Complainant told OCR that the Principal implemented or was in the process of implementing all of the agreed upon actions.

In this case, the information gathered by OCR raises concerns that while the District acted promptly and appropriately to address a number of the concerns raised through a series of actions and meetings, it did not follow its grievance procedures after it was on notice of the parents' allegation that the Student was being targeted based on disability. The Superintendent stated in the May XXXX meeting that he did not believe that the Student was targeted due to her disability but did not provide the parents with information garnered through an investigation or otherwise as to why he believed the incident was not due to disability and what that determination was based on. In addition, OCR has concerns that the District failed to provide the Complainant and Student's mother with the District's grievance procedure, which describes the process for filing a discrimination complaint. OCR also has concerns that the Student missed nine days of school due to the incident and that the District did not assess whether the IEP team needed to be convened to assess whether as a result of the effects of the bullying, the Student's needs had changed such that the Student was no longer receiving a FAPE.

To reach a determination regarding whether the District responded appropriately to notice of alleged harassment on the basis of disability, and whether the incident impacted the Student's ability to access a FAPE, OCR would need to interview the prior Superintendent, the principal, and other witnesses. In addition, OCR would need to obtain additional information in order to assess whether the underlying incident was on the basis of disability. However, prior to concluding its investigation and to address the issues alleged in the complaint, the District entered into the enclosed Agreement, which is aligned with the complaint allegations and the information obtained by OCR during its investigation.

Under the Agreement, the District agreed to convene an IEP meeting to determine if the placement and services for the Student are appropriate in light of the days she missed and the incident that occurred in May, provide written guidance and training to School and District administrators regarding the District's Uniform Complaint Procedure for resolving allegations of disability-based discrimination, including harassment, and assess whether the Complainant and Student are requesting to receive a written notice of finding as required by the District's grievance procedures.

When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the District's implementation of the agreement until the District is in compliance with Section 504 and Title II and their regulations, which were at issue in this case.

This concludes OCR's investigation of the complaint 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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it 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.

Thank you for the assistance the District extended to OCR in resolving this complaint. If you have any questions, please contact Michael Chang by telephone at 415-486-5388, or by email at michael.chang@ed.gov.

Sincerely,

/s/

Sara N. Berman
Team Leader

Enclosure: Resolution Agreement