



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

REGION IX

CALIFORNIA

June 27, 2016

Ms. Deborah Bettencourt
Superintendent
Folsom-Cordova Unified School District
1965 Birkmont Drive
Rancho Cordova, California 95742-6407

(In reply, please refer to case no. 09-16-1429.)

Dear Superintendent Bettencourt:

On May 12, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Folsom-Cordova Unified School District (District) alleging disability discrimination. The complaint alleged that the District discriminated against the Complainant's son (Student)¹ on the basis of disability. Specifically, OCR investigated the following issue:

- The District excluded the Student from a May XX, 2016, school sponsored field trip on the basis of disability when the District determined the Student was ineligible for the trip, yet failed to consider his disability; and sent him to a Kindergarten class for the day.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the District, and by interviewing the Complainant. Prior to OCR completing its investigation, the District voluntarily agreed to address the area of concern identified by OCR with respect to the issues investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain

¹ OCR notified the District of the identity of the Complainant and Student when the investigation was initiated. We are withholding their names from this letter to protect their privacy.

public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the regulations.

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts 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 §§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.

XXXX XXXXXXXX Elementary School (School) offers an optional reading incentive program known as Accelerated Reader (AR). The School explained that under the AR program, students read books in their reading range then take quizzes to earn points throughout the school year. Grades 2-6 participate in AR, and the goal for XXXXXX graders is 40 AR points. Students who achieve their AR goal are rewarded with a skating party. The Student, a XXXXXX grader, transferred to the School in the middle of the 2015-16 school year and has an IEP for a Specific Learning Disability and Speech or Language Impairment. The Student is below grade level in reading. The School stated that the Student's teacher modified the Student's AR goal to be 10 points because he transferred mid-year and has an IEP. The teacher independently made this decision as an accommodation for the Student. The Student's IEP team met in February 2016, but the February 2016 IEP does not contain any discussion of AR points for the Student. The Complainant stated that she felt she had not been sufficiently told about the AR program and that she did not know the Student's progress in AR or the implications of not meeting the AR goal. The School stated that at the end of the 2015-16 school year, the Student earned a total of 2 AR points. Because he did not meet his AR goal, he did not attend the skating field trip. According to the School, 159 students out of 273 reached their reading goal. Students who did not reach their AR goal were placed in the kindergarten and first grade classrooms since kindergarten and first grade did not participate in the AR program.

Though the AR program is voluntary for students at the School, OCR discussed with the District its concern that the School had modified the Student's AR goal based, in part, on the Student having a disability related specifically to reading but without consulting

the Student's IEP team regarding what would be an appropriate modification or whether the Student should receive supports should he choose to participate.

As a result, to address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

Under the agreement, the District will convene an IEP meeting for the Student to include a discussion of his potential participation in the reading incentive program. OCR notes that the AR program is voluntary, and the Student may choose not to participate. However, if the decision is made that the Student will participate, the IEP team will discuss whether any accommodations or modifications needed to support his participation in the program.

OCR notes that there was insufficient evidence to support the Complainant's assertion that the Student was required to spend the day of the field trip in the kindergarten classroom based on his disability. Rather the evidence showed that all students, disabled and non-disabled, who did not participate in or meet their point requirement in the AR program spent the day in the kindergarten or first grade classrooms.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. 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, Title II, and their implementing regulations which were at issue in the case.

This concludes the investigation of this complaint. OCR's determination in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Complainant or Student 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 which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions please contact Annie Lee at (415) 486-5594, annie.lee@ed.gov.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure