

November 6, 2014

Ralph Blevins, Superintendent
Rural Vista Unified School District #481
414 E. Goodnow, Box 98
White City, Kansas 66872

Re: OCR Docket # 07141151

Dear Superintendent Blevins:

On May 22, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Rural Vista Unified School District #481 (District), White City, Kansas, alleging discrimination based on disability. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegation 2. For the reasons set out below, we have determined there is insufficient evidence to conclude that the District created a hostile education environment as alleged in allegation 1 of the complaint.

Specifically, the Complainant alleged the District discriminated against her XXXX (the Student) on the basis of disability (XXXX XXXX):

1. when a District staff member made inappropriate comments to XXXX XXXX at an XXXX XXXX XXXX (XXXX) XXXX XXXX XXXX XXXX during the spring 2014, thereby creating a hostile education environment; and
2. by treating the Student differently than students without a disability by failing to have an adequate emergency evacuation plan in place for XXXX and failing to simulate a possible emergency evacuation XXXX XXXX XXXX XXXX XXXX XXXX XXX XXXX XXXX during the 2013-14 school year.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, and the regulations prohibiting retaliation. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR applies a preponderance-of-the-evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

OCR investigated the Complainant's allegations against the District. OCR considered information the Complainant provided in her complaint and conducted telephone interviews with the Complainant on August 14, 2014 and October 29, 2014, and an in-person interview with the Complainant and the Student on October 16, 2014. OCR received documents from the District on August 21, 2014, and conducted a site visit and interviews with XXXX XXXX school staff on October 16, 2014, and conducted a telephone interview with the former school principal on October 28, 2014. OCR carefully considered all of the information obtained. OCR's determination regarding the applicable legal standards, findings of fact, and the analysis and conclusion regarding allegation 1 are set forth in this letter.

Allegation 1

The Complainant alleged the District discriminated against the Student on the basis of disability when a District staff member made inappropriate comments to XXXX XXXX at XXXX XXXX XXXX XXXX XXXX XXXX during the spring 2014, thereby creating a hostile education environment.

Legal Standard

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities from an institution's educational program. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive such that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations. A hostile environment may also exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from an institution's educational program. When disability

harassment limits or denies a student’s ability to participate in or benefit from an institution’s programs or activities, the institution must respond effectively.

To determine whether a recipient is responsible under Section 504 and Title II for disability harassment, OCR examines: 1) whether a hostile environment exists because harassing conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a recipient; 2) if a hostile environment exists, whether a recipient has actual or constructive notice of the hostile environment; and 3) if a recipient has notice, whether the recipient took appropriate responsive action.

Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances, including a consideration of whether the disability harassment is severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and the location of the harassing incidents, as well as the identity, number, and relationships of the persons involved. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability.

Findings of Fact

The Complainant alleged the District discriminated against the Student on the basis of disability when a District staff member made inappropriate comments to XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX during the spring 2014, thereby creating a hostile education environment.

PARAGRAPH REDACTED

Analysis and Conclusion

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services, or opportunities from an institution’s educational program. When harassing conduct is sufficiently severe, persistent, or pervasive such that it creates a hostile environment, it can violate a student’s rights under the Section 504 and Title II regulations. To determine whether a recipient is responsible under Section 504 and Title II for disability harassment, OCR first examines whether a hostile environment exists because harassing conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a recipient.

PARAGRAPH REDACTED

PARAGRAPH REDACTED

PARAGRAPH REDACTED

A hostile environment exists when harassing conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a recipient. OCR is unable to conclude that harassing conduct occurred in this case and additionally is unable to conclude XXXX XXXX ability to participate in or benefit from the District’s services was limited.

OCR has determined a preponderance of the evidence does not support the Complainant’s allegation that inappropriate comments XXXX XXXX XXXX XXXX XXXX XXXX XXXX created a hostile education environment. Accordingly, OCR is closing allegation 1 as of the date of this letter.

Allegation 2

The Complainant alleged the District discriminated against the Student on the basis of disability by treating the student differently than students without a disability by failing to have an adequate emergency evacuation plan in place for XXXX and failing to simulate a possible emergency evacuation XXXX XXXX XXXX XXXX XXXX XXXX XXX XXXX XXXX during the 2013-14 school year.

OCR gathered information about the implementation of the Student’s evacuation plan during the 2013-14 school year and reviewed the Student’s current evacuation plan. During the investigation, OCR also reviewed the District’s notice of nondiscrimination and

determined it does not notify students, parents, and others that the District prohibits discrimination on the basis of age and provides equal access to the Boy Scouts of America and other designated youth groups. Additionally, the District's discrimination and harassment grievance procedure does not include a prohibition against retaliation or an assurance that if discrimination has occurred, appropriate corrective and remedial actions will be taken. Prior to the completion of OCR's investigation, the District submitted a signed Agreement (copy enclosed) on November 4, 2014, that, when fully implemented, will address allegation 2 of the complaint. The Agreement requires the District to revise the Student's current evacuation plan, review and revise its complaint and/or grievance procedure or develop a new complaint and/or grievance procedure to provide for prompt and equitable resolution of complaints alleging discrimination, harassment, and retaliation on the bases of race, color, national origin, disability, sex, and age, and revise its notice of nondiscrimination. Please consult the Agreement for further details.

OCR considers allegation 2 resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume the investigation.

The determinations discussed in this letter are not intended and should not be construed to pertain to any compliance issues under the regulations implementing Section 504, Title II, or any other statute enforced by OCR that may exist but are not specifically addressed herein.

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 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 is committed to prompt and effective service. If you have any questions, please contact Elizabeth Samples, Attorney, at (816) 268-0479 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at elizabeth.samples@ed.gov.

Sincerely,

Cedric D. Brown
Acting Supervisory Attorney

Enclosure