



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

November 25, 2013

Mary C. Shelton
Superintendent
San Ramon Valley Unified School District
699 Old Orchard Drive
Danville, CA 94526

(In reply, please refer to # 09-13-1316.)

Dear Superintendent Shelton:

The U.S. Department of Education, Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint against the San Ramon Valley Unified School District (District). The complainants alleged that the District discriminated against their son (Student) and other students based on disability.

OCR accepted the following allegations for investigation:

1. The District failed to implement the Student's Individualized Education Program (IEP) when it did not provide him services to enable him to achieve an independent daily living goal regarding making purchases in community businesses;
2. The District treated students in the Student's Special Day Class (SDC) differently based on disability by excluding them from a field trip provided to all other students at their grade level; and
3. The District treats students with disabilities differently by not providing their parents information about their academic progress equivalent to information provided to parents of nondisabled students.

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated 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 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

The applicable legal standards, OCR's disposition of each allegation and the facts OCR gathered relevant to each allegation are summarized below.

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.

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.

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.

Whether or not a particular modification or service would fundamentally alter the program or constitute an undue burden is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to a disabled individual would result in additional cost does not of itself constitute an undue burden on the program.

Allegation One: The District failed to implement the Student's IEP when it did not provide him services specific to an independent daily living goal regarding making purchases in community businesses.

- The Student is a seventh grader diagnosed with XXXXXX and XXXXXX XXXXXXXX. Pursuant to his IEP, he is educated primarily in a SDC classroom for students with moderate to severe disabilities. At the time the complainants filed with OCR, the Student attended a middle school in the District (School One).
- A goal in the Student's IEP provides that the Student be given the opportunity to buy items "at school or in the community" to learn to make purchases. The complainants wanted the Student to attend a different District middle school (School Two) because, among other reasons, School Two was close to businesses that would provide the Student's class the opportunity to make purchases in the community while School One's location hindered off-campus excursions. After the OCR

complaint was filed but prior to the start of the 2013-14 school year, the District agreed to transfer the Student to School Two.

- After filing the OCR complaint, the complainants requested an Independent Educational Evaluation from the District.¹ The complainants expressed concern to OCR that the District had not responded to their request. In October 2013, the District responded to their request.
- The complainants also expressed concern to OCR that members of the Student's IEP team would retaliate against the family for filing an OCR complaint by changing the Student's IEP in a disadvantageous way. In response to this concern, the Assistant Superintendent for Human Resources reminded members of the IEP team that the District prohibits retaliation. Additionally, the District's Assistant Superintendent of Educational Services attended the Student's September 30, 2013 IEP meeting as an impartial facilitator. The complainants did not describe to OCR any specific acts of alleged retaliation.
- The complainants also expressed to OCR their disagreement with some of the services specified in the Student's IEP, and with the District's assessment of the Student's progress toward his IEP goals. They are aware of their right to file for due process with the State of California to address these issues under the IDEA.

Under Section 110(e) of OCR's Case Processing Manual, OCR will close an allegation if it obtains credible information that the allegation has been resolved, and there are no class-wide allegations. The complainants alleged that the District failed to implement the Student's IEP by denying him opportunities to make purchases from community businesses; however, the IEP goal specifies that the Student have the opportunity to make purchases in the community or at school. Further, the District has since transferred the Student to a new school of the complainants' choice, and they have not alleged that the current school denies the Student opportunities to make purchases in the community. Finally, the District responded to several concerns raised by the complainants about the appropriateness of services provided to the Student. Except in extraordinary circumstances not present in this case, OCR does not review the appropriateness of services for individual students. To the extent OCR had jurisdiction over the issues raised in this allegation, the information provided by the District and the complainants indicates that they have been resolved and do not have class-wide implications. Accordingly, OCR is closing this allegation.

Allegation Two: The District treated students in the Student's SDC differently based on disability by excluding them from a field trip provided to all other students at their grade level.

¹ Under IDEA, parents may request an Independent Educational Evaluation if they do not agree with the results with a district's evaluation of their child. A district may either grant the request and pay for the evaluation, or it may request a due process hearing to demonstrate that its own evaluation was appropriate.

- In April 2012, the District entered into an agreement with OCR to resolve a different complaint alleging exclusion of a child from a field trip and other non-academic activities based on disability.
- Pursuant to the agreement, the District adopted a procedure (Procedure) entitled “Participation in Extracurricular and Non-Academic Activities.” The District also has separate written guidance entitled, “Special Education Students Participation in Co-Curricular and Extra-Curricular Field Trips.” Both documents provide that students with disabilities be permitted to participate in field trips to the “maximum extent appropriate to the needs of the student” and that the District must provide accommodations if they are needed for the student to participate. The Guidance provides that decisions about whether students participate in field trips should be made by their IEP teams. Neither the Procedure nor the Guidance sets forth a standard for, or describes how the District is to determine the extent to which participation in extra-curricular field trips is appropriate for a particular student.
- During the 2012-13 school year, School One sponsored field trips for sixth, seventh and eighth graders. The preliminary evidence indicates that students from the moderate-severe SDC classes were not invited to participate in the field trips; the students’ IEP teams did not make individualized determinations that it was not appropriate for the students to participate.

Qualified students with disabilities may not be treated differently than their nondisabled peers. Before excluding a student with disabilities from a field trip, a school must demonstrate that even with the provision of accommodations the student is not qualified to participate in the field trip, that providing the accommodations would result in an undue burden, or that the field trip is otherwise inappropriate to the student’s individual needs. Such determinations should be made by the student’s IEP or Section 504 team. Establishing a policy suggesting that participation of all disabled students is conditioned on an affirmative showing in each case that the trip is appropriate to the student’s individual needs is not consistent with these principles.

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. Prior to completion of OCR’s investigation, the District expressed its intent to take measures necessary to ensure that students with disabilities have an equal opportunity to participate in field trips. Specifically, the District agreed to revise the Procedure and Guidance to clarify that qualified students with disabilities are entitled to participate in field trips to the same extent as non-disabled students, to specify that decisions regarding participation are to be made by students’ Section 504 and IEP teams and to set forth the limited circumstances in which a student may be denied participation. The District’s agreement, including the process for ensuring that the revised procedures are correctly and consistently implemented, are memorialized in an Agreement to Resolve signed by the District on November 22, 2013. Accordingly, OCR did not

complete its investigation or reach conclusions as to whether the District failed to comply with Section 504 or Title II with respect to this allegation.

Allegation Three: The District treats students with disabilities differently by not providing their parents information about their academic progress equivalent to information provided to parents of nondisabled students.

- Some District schools have available an online computer program called “School Loop” for teachers to communicate with parents and students. Written guidance on the program provided by School One to parents states that School Loop contains grades/progress reports, homework items, a homework calendar, classwork/projects, intra-school email, announcements/school news and discussions. The guidance states that School One expects that “teachers update School Loop grades and assignments once a week”; that “parents use and monitor School Loop to support students and communicate with teacher as needed”; and that “students check School Loop daily and often to communicate and get information.”
- The complainants told OCR that they do not receive any communication through School Loop from the Student’s SDC teachers. According to the District, all teachers are encouraged but not required to use School Loop, and the extent to which it is used varies by teacher; some special education teachers use it, while some general education teachers do not.
- Parents of SDC students receive a quarterly Progress Report of Annual Special Education Goals showing students’ periodic progress in achieving each of their IEP goals on a scale of 1 to 5. This is not provided through School Loop. According to the District, because SDC students typically do not receive homework or grades, the information SDC teachers would include on School Loop, if they use it, is different from that provided by general education teachers.

As noted above, under 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. Before OCR completed its investigation, the District proposed that it adopt a policy requiring that the IEP and Section 504 teams of students with disabilities discuss whether and to what extent school information systems such as School Loop should be used by the student’s teachers or service providers to communicate with the student or her or his parents. The Agreement to Resolve specifies that, in making this determination, the team will apply the principle that districts may not treat students differently on the basis of disability in the provision of aids, benefits, or services; however, districts may provide a different aid, benefit, or service to persons with disabilities where necessary to provide an aid, benefit, or service that is as effective as that provided to others. The agreement specifies how the District will disseminate this policy. Because the District voluntarily resolved this allegation before OCR completed its investigation, OCR did not reach conclusions as to whether the District failed to comply with Section 504 or Title II.

OCR will monitor the District's implementation of the Agreement to Resolve. OCR is closing this complaint as of the date of this letter, and notifying the complainant simultaneously. 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 whether or not OCR finds a violation.

OCR routinely reminds districts that they 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.

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 District's cooperation in resolving this case. In particular, OCR appreciates the work of XXXXXXXX XXXXX, Assistant Superintendent for Human Resources. If you have any questions about this letter, please contact Suzanne Taylor, OCR attorney, at 415-486-5561.

Sincerely,

/s/

James Wood
Team Leader

Enclosure

cc (email only): XXXXXXXX XXXXX,
Assistant Superintendent, Human Resources