



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

January 24, 2014

Dr. Rick Miller
Superintendent
Santa Ana Unified School District
1601 E. Chestnut Ave.
Santa Ana, California 92701

(In reply, please refer to case no. 09-13-1344.)

Dear Superintendent Miller:

On May 31, 2013, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Santa Ana Unified School District (District). The Complainant alleged that the District (1) failed to provide her daughter (Student) with a free, appropriate public education (FAPE) by disciplining the Student without following adequate evaluation and placement procedures and by failing to implement the Student's individualized education program (IEP) and (2) treated the Student differently than other students based on race and disability, and failed to respond appropriately and effectively to notice of the different treatment.

OCR commenced its investigation of the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II, and their regulations.

Legal Standards

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.

Further, under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives 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.

Complaint Resolution

Under Article III, Section 110 of OCR's Case Processing Manual (CPM), OCR will administratively close a complaint if the same complaint allegation has been filed by a complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and, for resolved complaint allegations, the resolution meets OCR regulatory standards.

During the initial phase of the investigation into this complaint, OCR learned that the Complainant had filed a complaint with the California Department of Education (CDE) on May 31, 2013, which alleged, *inter alia*, that the District failed to implement the Student's IEP. CDE investigated the complaint and, with respect to the particular allegation described above, required the District to fully implement the Student's operative IEP and provide relevant training to all applicable personnel at the Student's school site. The District provided OCR with a copy of a closure letter from CDE, dated September 30, 2013, which stated that the District had completed the required corrective actions. Because the information available to OCR indicates that the IEP implementation aspect of the Complainant's OCR complaint has been investigated and resolved by CDE, and the resolution meets OCRs standards, OCR is administratively closing that portion of the complaint as of the date of this letter.

With respect to the remaining allegation, under Article III, Section 302 of the CPM, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses interest in resolving the allegation through a voluntary agreement. The District expressed its interest in voluntary resolution in November 2013 and, prior to an OCR compliance determination and without admitting to any violations of the Federal laws enforced by OCR, signed the enclosed Resolution Agreement (Agreement). The Agreement commits the District to (1) remove certain disciplinary infractions from the Student's record, (2) continue to implement the behavior and counseling supports for the Student under specified conditions and (3) report to

OCR regarding discipline of the Student or complaints made by the Student or Complainant between the date of the Agreement and the conclusion of the 2013-2014 school year.

OCR concluded that implementation of the Agreement will resolve the remaining allegation in this complaint. Thus, OCR is closing the investigative phase of this complaint as of the date of this letter. OCR is concurrently advising the Complainant of this resolution. OCR will monitor the implementation of the Agreement.

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.

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.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

OCR wishes to thank the District, and in particular, the District's Counsel Gabriel A. Sandoval, for your assistance in resolving this complaint. If you have any questions about this letter, please contact Carolyn Wade, Investigator, at (415) 486-5563 or Kendra Fox-Davis, Civil Rights Attorney, at (415) 486-5418 or kendra.foxdavis@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc (via email): Gabriel A. Sandoval, Esq.