



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

February 26, 2015

Dr. Arlando Smith and Akur Varadarajan
Co-interim Superintendents
New Haven Unified School District
34200 Alvarado-Niles Road
Union City, California 94587

(In reply, please refer to OCR case no. 09-14-1102.)

Dear Dr. Smith and Mr. Varadarajan:

In a letter dated December 30, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified you of a complaint filed against the New Haven Unified School District (District) alleging discrimination based on disability. Specifically, the complainant alleged that the District failed to provide the complainant's son (Student) with a free, appropriate public education when it did not implement his Section 504 plan for psychological services.¹

As explained below, prior to reaching findings of fact or conclusions of law in this matter, OCR accepted a resolution agreement from the District that resolves the complaint allegation. As such, OCR is closing the investigation of this complaint as of the date of this letter.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990 over disability discrimination complaints filed against public educational entities. The District receives funds from the Department, is a public educational entity, and is subject to the above laws and regulations as enforced by OCR.

Pursuant to section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved at any time before the conclusion of an investigation if the recipient expresses an interest in resolving the complaint. After OCR began its investigation, the District expressed an interest in addressing the complaint allegation through a voluntary Resolution Agreement Reached During an Investigation (Agreement). The District,

¹ OCR notified the District of the identities of the complainant and Student in its December 30, 2013 letter and is withholding their names from this letter to protect their personal privacy.

without admitting any violation of the law, signed the enclosed Agreement. The Agreement will fully address the issue raised in this complaint.

As indicated in the Agreement, the District will review and revise as needed its Section 504 policy, procedures, and related materials to ensure compliance with Section 504 and Title II; conduct training to all school site Section 504 coordinators and other appropriate administrators and staff on the District's responsibility to provide a free appropriate public education to students with disabilities under Section 504; and offer to convene a Section 504 meeting.

OCR has determined that the actions taken by the District and its commitments expressed in the enclosed Agreement, when implemented, will resolve the issue in this complaint. OCR will monitor the implementation of the enclosed Agreement and may reopen the investigation if the District does not implement the provisions of the Agreement. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This concludes the 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.

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 individual may file a complaint with OCR 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact me at (415) 486-5337.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Enclosure

Cc: Melanie Seymour, Esq.
Fagen Friedman & Fulfrost

Sarah Kappler, Director of Special Services