



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

April 3, 2015

Clint Harwick, Ed.D
Superintendent
Saddleback Valley Unified School District
25631 Peter A. Hartman Way
Mission Viejo, California 92691-3142

(In reply, please refer to Docket # 09-14-1150.)

Dear Superintendent Harwick:

On February 10, 2014, the U.S. Department of Education, Office for Civil Rights (OCR) notified your office that OCR had accepted for investigation a complaint against Saddleback Unified School District (District). The complainant¹ alleged that her son (the Student) had been subjected to discrimination on the basis of disability. OCR initiated an investigation of the following issues:

1. Whether the District denied the Student a free appropriate public education (FAPE) by failing to evaluate him in all areas of disability in middle school because of his high scores on state standardized tests; and
2. Whether the District denied the Student a FAPE in high school by failing to respond to the complainant's request for a Section 504 plan.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations. Section 504 and Title II prohibit discrimination on the basis of disabilities in programs and activities operated by recipients of Federal financial assistance, and by public educational entities. The District receives funds from the Department and is a public educational entity, and is therefore subject to the laws and regulations enforced by OCR.

OCR gathered preliminary evidence through interviews with the complainant and discussions with counsel for the District. OCR also reviewed documents and records submitted by the District and the complainant.

Under OCR's complaint resolution procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the

¹ OCR notified the District of the identity of the complainant and Student when the investigation began. OCR is withholding their names from this letter to protect their privacy.

complaint. During the course of OCR's investigation process, the District expressed an interest in resolving the complaint. On February 20, 2015, the District submitted a Resolution Agreement (RA) which, when implemented, will resolve the allegation of this complaint. The RA was approved by the District Board of Education on March 12, 2015. For this reason, OCR did not complete its investigation or reach findings or conclusions as to whether the District had failed to comply with Section 504 or Title II.

The facts considered during the preliminary investigation, the applicable legal standards, and the reasons for our determination 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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

The Student was diagnosed with Attention Deficit/Hyperactivity Disorder (AD/HD) when he was in elementary school. The complainant informed OCR that he began struggling when he entered intermediate school. She met with the Student's counselor during the fall of his eighth grade year (November and December 2012) to discuss these difficulties. Documents submitted by the District confirm that the Student was on an "at risk" list by the fall of eighth grade and that the

complainant and the Student's counselor discussed his AD/HD and his difficulties in school during two December meetings.

The complainant alleged that she requested evaluation for a Section 504 plan during meetings with school staff and administrators, but that she was informed that, because of his high standardized test scores, he would not qualify for such a plan. She alleged that she was instead told to enroll him in private tutoring and a District-sponsored homework club. The Student completed eighth grade with a grade point average of 1.5, and was not permitted to participate in promotion ceremonies. The process for developing a Section 504 plan was ultimately initiated in June 2013.

The student entered ninth grade in fall 2013. At the request of the Student and his parents, a Section 504 plan was not developed for him at the beginning of the year. The complainant alleged that the District did not respond promptly to her subsequent requests that the Section 504 process be initiated, and that the Section 504 plan, when it was finally developed, did not adequately take into account accommodations recommended by the Student's doctor.

After OCR reviewed data provided by the District, but before it interviewed District staff regarding the complainant's allegations, the District expressed an interest in resolving the complaint. During the pendency of the resolution process, the District substantially revised its Section 504 procedures and developed a new Section 504 plan for the student, which considered his doctor's recommendations. On February 20, 2015, the District submitted a Resolution Agreement in which it agreed to reimburse the complainant for tutoring expenses incurred between January and June of the Student's eighth grade year and to complete its revision of Section 504 procedures that are consistent with the Section 504 regulations. The District also agreed to distribute a memorandum reminding site personnel about the procedures for responding to parent requests for evaluation and providing examples of circumstances, including poor or failing grades over a lengthy period of time, which should trigger consideration of referral. OCR concluded that the agreement, when implemented, will resolve the complaint. For this reason, OCR did not complete its investigation, and reached no conclusions as to whether the District violated Section 504 or Title II in connection with the allegations of this complaint.

OCR has determined that the actions in Agreement, when implemented, will resolve the issues in this complaint and is closing this matter as of the date of this letter. 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 OCR's 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 set 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 may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank you and your staff for your cooperation and courtesy in resolving this matter. If you have any questions about this letter, please contact Katie Riggs, Civil Rights Attorney, at (415) 486-5544.

Sincerely,

/s/

MaryBeth McLeod
Team Leader

Enclosure

cc: Alefia Mithaiwala,
Harbottle Law Group