



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

May 12, 2016

Dr. Brian McDonald
Superintendent
Pasadena Unified School District
351 S. Hudson Ave.
Pasadena, California 91101

(In reply, please refer to case no. 09-14-1316.)

Dear Superintendent McDonald:

On December 31, 2015, the U.S. Department of Education, Office for Civil Rights (OCR) issued a letter finding Pasadena Unified School District (District) in violation of in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, as well as Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation with respect to the above-referenced complaint. The complaint alleged that the District discriminated against the Student¹ on the basis of disability and national origin. Specifically, OCR investigated whether the District failed to provide the Student with a Free Appropriate Public Education (FAPE) during the 2013-2014 school year. OCR also investigated whether the District failed to provide the Student, an English learner, with an effective program of English Language Development (ELD) and whether the District denied the Student's parent an equal opportunity to meaningfully participate in the Student's education as compared to English-fluent parents by failing to translate special education documents and provide timely interpretation services.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Additionally, OCR is responsible for

¹ OCR notified the District of the identity of the Student when the investigation began. We are withholding the Student's name from this letter to protect the Student's privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin. As a recipient of federal financial assistance and as a public entity, the District is subject to Section 504, Title II, Title VI and their implementing regulations. OCR therefore has jurisdiction over this complaint.

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.

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin,” 35 Fed. Reg. 11,595. The memorandum clarified OCR policy under Title VI regarding the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students. It states that school districts must take affirmative steps to address the language needs of limited English proficient students (English learners or ELs).

The May 25th memorandum also states that school districts may not assign national origin minority group students to special education programs on the basis of criteria which essentially measure or evaluate English language skills. Therefore, districts must employ standards and

procedures for the evaluation and placement of language minority students in special education that reliably identify students' educational disabilities, rather than the students' lack of English proficiency.

Additionally, OCR policy interpreting Title VI and the May 25th memorandum² requires school districts to select a sound educational theory for their programs for English learners, and to use practices, resources and personnel reasonably calculated to effectively implement their educational theory. OCR also reviews the educational program to see whether it succeeds in producing results indicating that the students' language barriers are actually being overcome in a reasonable period of time. Districts have a dual responsibility to teach students English and to provide them with access to the curriculum, taking steps to ensure that students are not left with academic deficits. In addition, districts must evaluate the implementation and outcomes of their services for English learners to determine whether the services are successful in meeting these responsibilities and the academic achievement standards set by the district. If not, districts must modify the programs as necessary.

School districts have an obligation to ensure meaningful communication with Limited English Proficient (LEP) parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents. At the school and district levels, this essential information includes but is not limited to information regarding special education and related services and IEP meetings and grievance procedures.

OCR's December 31, 2015 letter finding the District to be in violation of Section 504, Title II, Title VI and their implementing regulations with respect to the allegations at issue in this complaint is incorporated by reference into this letter. As explained in the letter of findings, OCR's investigation revealed that the District denied the Student a FAPE by failing to implement his IEP for nearly the entire 2013-2014 school year because he was not scheduled into courses consistent with his IEP, failing to evaluate whether the Student was meeting all the goals in his IEP and failing to ensure that placement and service decisions were made by a group of individuals knowledgeable about the Student. Additionally, OCR's investigation revealed that the District failed to provide the Student with an effective program of English Language Development (ELD) by removing him from ELD in 9th grade without having made an objective decision based on student data by a person qualified in the EL area although the Student still needed targeted ELD to enable him to reach full English proficiency. Finally, OCR's investigation

² See U.S. D.O.J. and D.O.E. jointly issued Dear Colleague Letter entitled *English Learner Students and Limited English Proficient Parents* (January 7, 2015).

revealed that the District failed to provide the Student's parent with translated special education documents and interpretation services.

On May 12, 2016, OCR received a signed copy of the enclosed Resolution Agreement (Agreement) from the District. Under the Agreement, the District has agreed to take the following actions:

- The District will place a copy of the resolution letter and the agreement in the Student's special education records.
- The District will provide the Student's parent with translations of the Student's May 2013 triennial assessment report, September 2014 psycho-educational report and IEPs and speech assessments from 2013-2014 and 2014-2015 school years.
- The District will rescind the October 2014 IEP.
- The District will reimburse the parent for any English language development (ELD) support, tools and materials purchased by the Student's family during the 2013-2014 school year.
- If the Student returns to the District, the District will provide the Student's parents with translated documents that contain essential information including, but not limited to, all of the Student's special education documents, progress and grade reports, and transcripts.
- The District will develop or amend its written policies and procedures to ensure that Pasadena High School (PHS) staff are aware of all incoming ninth grade students and students who are new to PHS with disabilities who have an IEP or Section 504 plan, including Students who are not programmed by PHS in the preceding spring, and of the requirement to provide such students with FAPE.
- The District will provide training to all PHS case carriers on maximizing effective use of the District's data system to access information to assist them in serving the students on their case loads.
- The District will amend its LEP Parent Communication Plan for parents of students with disabilities to ensure that it includes the following components:

- a needs assessment, a policy and procedure for the District and school sites to identify LEP parents/guardians of students with disabilities who require written translation and /or oral interpretation;
- a policy and procedures for ensuring that LEP parents/guardians receive important written information regarding their students, and regarding District and school programs and services, in a language they understand;
- a policy and procedures for ensuring that LEP parents/guardians of students with disabilities are able to participate meaningfully in District and school meetings, programs and activities, and are able to communicate effectively with District and school staff about the education of their children;
- a description of how the District will ensure that translation and interpretation services are effective and provided by qualified individuals;
- a description of how the District will provide written notice to parents/guardians of students with disabilities on the availability of District-provided interpreters and translation services for the District's predominant non-English languages;
- training for staff who will provide interpretation and translation services, for District and school site administrators and for staff who have contact with parents; and,
- a description of how the District will annually evaluate, based on data collected, the adequacy of the District's efforts to meaningfully communicate with LEP parents/guardians of students with disabilities.

This Agreement is designed, when fully implemented, to resolve this complaint and remedy the District's Section 504, Title II and Title VI violations, by providing the Student's parent with translated documents, by making appropriate changes to the Student's special education file, and by providing appropriate placement of new students to PHS who have IEPs or Section 504 plans and translation and interpretation to LEP individuals. OCR will monitor implementation of the Agreement until the District has fulfilled its terms and is in compliance with Section 504, Title II, Title VI and their implementing regulations, which were at issue in this case.

OCR is notifying the complainant of this resolution by concurrent letter. 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, a complaint may be filed 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, it will seek to protect, to the extent provided by the law, personal information which, if

released, could reasonably be expected to constitute an unwarranted invasion of privacy. The complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR would like to thank the District, and especially Yani Aghili, for their cooperation during this investigation. If you have any questions regarding this letter, please contact Gloria Guinto at gloria.guinto@ed.gov.

Sincerely,

/s/

Zachary Pelchat

Team Leader

Enclosure

cc: Yani Aghili (by email only)