



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

December 22, 2014

Joel Shawn, Ed.D.
Superintendent
Arcadia Unified School District
234 Campus Drive
Arcadia, California 91006

(In reply, please refer to # 09-14-1322.)

Dear Dr. Shawn:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above referenced complaint against the Arcadia Unified School District (District). The Complainant¹ alleged that the District discriminated against XXX XXXXXXXXXXXXXXX (Student) and the other students in her special day class on the basis of their disability. The issue OCR investigated was whether the District treated the students in the special day class differently by providing them with a shorter school day than their non-disabled peers during the 2013-14 school year.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulations. 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 (Title II) 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.

OCR investigated this complaint by conducting interviews and by reviewing documents provided by the Complainant and the District. Based on the evidence, OCR determined that the District was not in compliance with Section 504 and Title II regulations. On December 17, 2014, the District signed the attached Resolution Agreement to address the issue of noncompliance. The facts gathered during the investigation, the applicable legal standard, and the reasons for our determination are summarized below.

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

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. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1)(i) a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

Our investigation showed the following:

- The Student's middle school has two self-contained special day classes. One class is for students participating in the Gaining Opportunities for Achievement of Lifelong Skills (GOALS) program, which is designed for students with serious emotional and behavioral needs. The other special day class is for students with intellectual disabilities. Both classes are open to students who live within the West San Gabriel special education local plan area (SELPA)². Students who do not reside in the District, but live within the SELPA, can be placed in either of the special day classes through their individualized education program (IEP).
- The Complainant informed OCR that the Student lives outside of the District boundaries but was placed in the GOALS program for the 2013-14 school year through her IEP. The Complainant alleged to OCR that during the last school year the District discriminated against the Student and her classmates by dismissing their special day class anywhere from ten to fifteen minutes earlier than the general education classes. The Complainant also believed that the other special day class was being dismissed earlier like the GOALS class.
- The two special education teachers told OCR that the time students left their classrooms at the end of the day varied slightly depending on the behavior of the students. The teachers also stated that the special day students left their classroom on average of five minutes before the end of the school day so that they could walk through the hallways and quad area

² OCR did not open a complaint against the SELPA because the GOALS program is operated by the District and staffed with District staff members, and the District was willing to voluntarily resolve the problem.

before it became overcrowded with the other students.³ The teachers stated that many of their students had difficulty walking through the crowded hallways due to their disabilities. According to the teachers, some of their students became anxious when they walked through the crowded hallways, while other students exhibited behavior issues due to their disability.

- The teachers also told OCR that their students had long bus rides home and that they wanted their students to be able to use the restroom before boarding the school bus. In addition, the teachers did not consider the five minutes to be lost instructional time because the students were provided with ongoing instruction as to how to navigate the campus and to practice social and behavioral skills taught to them through their educational programs.
- The Complainant told OCR that the Student did not have any problems walking through the crowded school hallway and that the Student should have received the same amount of instructional time as her non-disabled peers. The Complainant also told OCR that the Student transferred out of the District at the end of the 2013-2014 school year and that she is currently attending a middle school in her district of residence.
- The District informed OCR that as of the beginning of the 2014-2015 school year, the students in both special day classes have been dismissed at the same time as the non-disabled students at the school. The District also provided OCR with a copy of a memorandum that was sent to the middle school principal, the special education director, and the special day class teachers reminding them that school schedules and transportations arrangements must be made to ensure that special education students receive the same number of instructional minutes as non-disabled students, unless a different number of minutes of instruction is determined to be appropriate based on the individual needs of a specific student. The memorandum also notified the staff members that, if a special education student needs a shorter school day due to their disability, that decision must be made on an individual basis, based on the student's unique needs, and determined by the IEP or Section 504 team.

OCR determined that the District was not in compliance with Section 504 and Title II regulations when it failed to provide the students in the special day classes with an equal number of instructional minutes as the students in the general education classes, without making individualized decisions that this was necessary for the needs of specific students, or providing another legitimate nondiscriminatory justification. Although the Complainant and the District provided OCR with conflicting information as to how much earlier the special day classes were dismissed during the last school year, OCR found the teachers' testimony credible and determined that on average the classes were dismissed approximately five minutes earlier.

The District partially remedied the noncompliance prior to the conclusion of this case when it issued the memorandum described above to ensure that the problem does not occur again. In

³ The middle school has approximately 800 students enrolled at the school.

addition, the District signed the attached Resolution Agreement agreeing to provide each student who was enrolled in either of the two special day classes during the last school year and continues to be enrolled this school year with fifteen hours of compensatory educational services. Thus, OCR determined that the Resolution Agreement, when fully implemented, will fully address the issue of non-compliance. OCR will continue to monitor the implementation of the Resolution Agreement until it is fully implemented.

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 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 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 upon request. In the event that OCR receives such a request, we 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 privacy.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR thanks Anahid Hoonanian, Dr. David Muñoz, XXXXXXXX XXXXXX, and XXXX XX, for their continued assistance in resolving this case. If you have any questions about this letter, please contact Minako Sakurai at minako.sakurai@ed.gov or (415) 486-5552.

Sincerely,
/s/
James M. Wood
Team Leader

cc: Anahid Hoonanian
Attorney at Law