



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

January 14, 2015

Dr. John Nickerson
Superintendent
Acalanes Union High School District
1212 Pleasant Hill Road
Lafayette, California 94549

(In reply, please refer to 09-14-1357.)

Dear Superintendent Nickerson:

On May 28, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Acalanes Union High School District (District). The Complainant alleged that her daughter (Student) was subjected to discrimination on the basis of disability.¹ Specifically, OCR investigated whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's Section 504 plan.

OCR investigated this 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 under Title II of the Americans with Disabilities Act of 1990 (Title II) over disability discrimination complaints filed against public educational entities. The District receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

Under Article III, Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the allegation through a voluntary resolution agreement (Resolution Agreement). This letter summarizes the applicable legal standards and how the complaint was resolved.

I. Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide 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

¹ OCR provided the District with the name of the Complainant and Student in our April 12, 2013 notification letter. Therefore, OCR has not included the Complainant or Student's identities in this letter.

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 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of 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. School districts are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment.

II. Resolution

The District, without admitting any violation of federal law, voluntarily agreed to enter into the attached Resolution Agreement with OCR to resolve the complaint. The Resolution Agreement requires the District convene a Section 504 meeting, review the Student's auditory processing disorder evaluation and consider whether adjustments need to be made to the Student's Section 504 Plan. The District will also ensure that the Student's Section 504 team reviews OCR's November 12, 2014 Dear Colleague Letter on effective communication for students with hearing, vision and speech impairments and OCR's January 25, 2014 Dear Colleague Letter on Equal Access to Extracurricular activities for students with disabilities and designs a system for tracking implementation of the Student's Section 504 Plan.

OCR has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, OCR is closing this complaint as of the date of this letter. OCR will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the District does not comply with the Resolution Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency 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.

OCR would like to thank the District for its cooperation during this investigation. If you have any questions regarding this letter, please contact Abony Alexander, OCR attorney, at (415) 486-5590 or abony.alexander@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosures