



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

October 15, 2014

Julie Hall-Panameño  
Director  
Los Angeles Unified School District  
Education Equity Compliance Office  
333 S Beaudry Avenue, 20th Floor  
Los Angeles, California 90017

(In reply, please refer to case no. 09-14-1401.)

Dear Director Hall-Panameño:

On June 12, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Los Angeles Unified School District (District). The Complainant alleged discrimination on the basis of disability.<sup>1</sup> Specifically, OCR investigated whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to consider participation in athletics as part of the Student's educational placement.

OCR investigated this complaint under the authority of Section 504 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 gathered evidence through interviews and reviewing documents provided by the Complainant and District. 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 an interest in resolving the complaint. Prior to the conclusion of OCR's investigation into the harassment allegation, the District expressed interest in resolving the allegation through a voluntary Resolution Agreement (Agreement). The applicable legal standards, factual background and case resolution are summarized below.

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<sup>1</sup> OCR identified the name of the Student and complainant in previous correspondence and is withholding their names in this letter to protect their privacy.

## **I. Legal Standards**

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)(ii) and 28 C.F.R. §35.130(b)(1) a recipient public school system may not, 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.

Under 34 C.F.R. §104.4(b)(4) a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that: (i) have the effect of subjecting qualified disabled individuals to discrimination on the basis of disability. The Title II regulations contain a similar provision applicable to public entities, at 28 C.F.R. §35.130(b)(3).

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.

## **II. Background**

- The Student is enrolled at a District high school (High School). The District has identified the Student as an individual with a disability under the IDEA in the category of autism and the Student has an Individualized Education Program (IEP). The IEP does not address participation in extracurricular activities.
- The Complainant stated the Student participates in a community baseball league outside of school and unsuccessfully tried out for his High School's baseball team during the 2012-2013 school year. In June 2013, following the Student's baseball try-out, the Complainant filed an internal complaint with the District which alleged that the Student was not allowed to participate in the High School's baseball team based on his disability. In addition, the complaint alleged that the baseball coach treated the Student differently than his non-disabled peers during baseball try-outs.

- The District conducted an investigation of the Complainant's complaint under its Uniform Complaint Procedures and determined that the evidence did not sustain the Complainant's allegations. The internal complaint process was completed in September 2013. OCR did not review the adequacy of the District's response to this complaint because that issue was untimely for OCR investigation.
- During the 2013-2014 school year, the Student expressed interest in trying out for the baseball team again. The Complainant provided OCR with copies of letters of support from his community baseball league, attesting to his positive contribution to the baseball team and skills. The Complainant stated that prior to baseball try-outs, she consulted a disability rights advocate who advised her to request the Student's IEP team consider whether participation on the baseball team should be provided as part of the Student's FAPE. The Complainant stated that when she raised this issue with the Principal, he told her baseball was an athletic issue and not appropriate for the IEP team to discuss.
- The District provided OCR with a copy of Policy Bulletin 4692.3 (Policy), "Section 504 of the Rehabilitation Act of 1973." The Policy states that "the denial of equal access to the District's education programs and or activities and/or a the denial of FAPE on the basis of a student's disability(ies) is considered disability based discrimination" and that "[i]n addition, the District must provide nonacademic and extracurricular services and activities in a manner that ensures individuals with disabilities have an equal opportunity to participate."
- The Policy includes a guidelines section which provides additional information on the District's responsibility to provide students with disabilities equal opportunity to participate in programs and activities, including that schools must consider appropriate accommodations unless they result in a fundamental alteration the nature of the program. The Policy guidelines section does not address whether or how IEP or Section 504 teams would consider requests for participation in extracurricular activities as a part of a student's FAPE.

### **III. Resolution**

As noted above, prior to the conclusion of OCR's investigation, the District expressed an interest in resolving this complaint through a voluntary resolution Agreement. Therefore, OCR did not make a compliance determination in this case.

The enclosed voluntary Agreement resolves the Complainant's allegation. The Agreement requires the District modify the Policy regarding equal access to extracurricular activities to clarify how IEP, Section 504 or other multidisciplinary teams will consider requests to require participation in an extracurricular activity as part of the student's FAPE. The Agreement does not require the Student's IEP team place him on the High School's baseball team, but requires that the District treat the Student consistent with the revised Policy. The Agreement also requires that, if the Student elects to participate in baseball try-outs during the 2014-2015 season,

the District designate a District-level administrator or appropriate third party to oversee the Student's baseball try-out and provide feedback on his performance.

Based on the foregoing, OCR is closing this complaint as of the date of this letter and concurrently notifying the Complainant. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and other participants who feel that such actions have occurred may file a separate complaint with OCR.

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, it will seek to protect, to the extent provided by law, personal information which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

OCR wishes to thank you and the District for your assistance and cooperation in resolving of this complaint. If you have any questions please contact Kendra Fox-Davis, Civil Rights Attorney, at (415) 486-5418.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure