



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

February 27, 2015

Dorma Baker
Superintendent
Pajaro Valley Unified School District
294 Green Valley Road
Watsonville, California 95076

(In reply, please refer to case no. 09-14-1421.)

Dear Superintendent Baker:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its resolution of the above referenced complaint filed against the Pajaro Valley Unified School District. The complaint alleged that the District discriminated against the Student¹ on the basis of disability. Specifically, it alleged that the District denied the Student admission to its Migrant and Seasonal Head Start Program (Program) for the 2014 growing season.

OCR initiated its investigation of 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 the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

The Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), and the Title II regulations, at 28 C.F.R. §35.130(a) and (b), prohibit school districts from discriminating against qualified individuals with disabilities in providing any aid, benefit or service. Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iii), school districts may not: deny a qualified person with a disability an opportunity to participate in an aid, benefit or service; afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others; or provide a qualified person with a disability with an aid, benefit or service that is not as effective as that provided to others.

Under the Section 504 regulations, at 34 C.F.R. §104.38, a school district that provides preschool education or daycare may not exclude qualified disabled children on the basis of disability, and must take the needs of such children into account in determining the aid, benefits, or services to be provided. The Title II regulations, at 28 C.F.R. §35.130(b)(7), require a school district to make reasonable modifications to policies, practices, or procedures that are necessary to avoid disability discrimination, unless it can demonstrate that such modifications would fundamentally alter the nature of the service, program, or activity. Under 28 C.F.R. §35.130(b)(8), a school district may not apply eligibility criteria that screen or tend to screen out a disabled child or children from fully and equally enjoying any service,

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

program, or activity, unless it can show that the criteria are necessary to provide the offered service, program or activity.

OCR began its investigation by interviewing the Complainant and reviewing documents provided by the Complainant and the District.

The Program is operated by the District and supports parents who work in the agricultural fields. The Program provides comprehensive child development services that include free childcare from 6:00am to 6:00pm weekdays during the peak agricultural growing season each year. Eligibility to participate in the Program is based upon age, income, and family status as a migrant or seasonal farm worker family. Children with disabilities receive the highest priority for enrollment.

The Student is diagnosed with Autism and was four years old at the time the complaint was filed. The Complainant is an agricultural laborer. The Student participated in the Program during the 2012 and 2013 growing seasons. On March XX, 2014 the Complainant applied to enroll the Student in the Program for the 2014 growing season. On April XX, 2014, Program staff informed the Complainant that the Student would not be accepted into the Program due to safety concerns and available supervision support. The Complainant questioned that decision, and subsequently an individualized education program (IEP) meeting was convened on June XX, 2014 to discuss the matter. A memorandum of understanding (MOU) was developed, which was signed by the Complainant and the District. The MOU provided that the Student could enroll in the Program and that a regional center would provide one-on-one aide services.

Upon further consideration, however, the Complainant did not agree to the terms of the MOU because it did not provide for a substitute one-on-one aide in the event the assigned aide was absent. Ultimately, the Complainant did not enroll the Student in the Program, was unable to work as an agricultural laborer during the 2014 growing season, and lost her seniority. She was, however, approved to participate in a county operated in-home support program that compensated her for caring for the Student during this time period. During the course of the investigation the former employer informed the Complainant that it may reconsider the seniority decision if the District documented that the Student had not been accepted to the Program.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint. At the onset of OCR's investigation, the District expressed an interest in resolving this complaint. The District thereafter entered into the enclosed Resolution Agreement. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District complied or failed to comply with Section 504 or Title II with respect to the issue raised by this complaint.

Through the Resolution Agreement, the District agreed to offer to enroll the Student in the Program for the 2015 growing season and, if the Complainant accepts that offer, provide the Student with a one-on-one aide, substitute aide(s), and other necessary supplementary aids, supports or services. The District also agreed to provide the Complainant with a letter to her former employer indicating that the Student was not accepted into the Program for the 2014 growing season. Finally, the District agreed to develop, implement, and distribute a written procedure to ensure that children with disabilities are provided the aids, supports, services, and modifications necessary to have an equal opportunity to participate in the Program.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Resolution Agreement through completion. OCR is informing the Complainant of the complaint resolution by concurrent letter. Note that the Complainant may file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's investigative process 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 individual may file a complaint with OCR 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 we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR appreciates the courtesy and cooperation extended by you and your staff during the complaint resolution process. If you have any questions, please contact me at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Attachment

Cc: XXXXX XXXXXXXX and XXXX XXXXX
Fagen Friedman & Fulfrost