



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

December 18, 2015

Mr. Timothy Vanoli  
Salinas Union High School District  
431 Alisal Street  
Salinas, California 93901

(In reply, please refer to case no. 09-14-1435.)

Dear Superintendent Vanoli:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Salinas Union High School District (District). OCR investigated whether the District retaliated against the complainant, a special education teacher, by placing a "Letter of Direction" in his personnel folder because he sought to provide what he considered to be a more effective program of study to certain students with learning disabilities.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation, 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Federal funds, is a public education entity, and is subject to the requirements of Section 504 and Title II. Therefore, OCR has jurisdiction over this complaint.

OCR gathered evidence by reviewing documents and correspondence provided by the complainant and the District, and by conducting interviews with the complainant and District staff. On September 8, 2015, OCR issued a letter of impasse wherein it notified the District that it had reached a finding of non-compliance. Subsequent to the issuance of the letter of impasse, the District provided additional information about the case, and OCR determined that further investigation would be needed in order to reach a final determination regarding compliance. Prior to OCR completing such investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issues investigated. This letter summarizes applicable legal standards, some of the facts obtained during the investigation, and the terms of the resolution reached with the District.

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

The implementing regulations for Section 504, at 34 C.F.R. 104.33(b), provide that individualized determinations are required for service and placement decisions for students with disabilities. The regulation at 34 C.F.R. §104.35(c) provides that a team of persons knowledgeable about the student, the meaning of the evaluation data and the placement options will make decisions about services and placement for the student. The regulation at 34 C.F.R. §104.61, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibits school districts from intimidating, coercing, retaliating or discriminating against individuals for the purpose of interfering with any right or privilege secured by Section 504. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

When OCR investigates an allegation of retaliation, it examines whether the complainant engaged in a protected activity and was subsequently subjected to an adverse action by the school district, under circumstances that suggest a causal connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school district can provide a legitimate, non-retaliatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the adverse action was in fact retaliation.

### **Factual Background**

- The complainant is a Special Education Resource Specialist at a middle school in the District (School). He has credentials in Single Subject English, Crosscultural, Language and Academic Development (CLAD), a Learning Handicapped specialization and a Resource Specialist Certificate of Competence. He has been continuously employed by the District since 1998, and has worked at the School since the 2003-2004 school year.
- According to the description of their job responsibilities provided in the District's data response, Special Education Resource Specialists are responsible for providing instruction and services for students whose needs have been identified in an Individualized Education Program (IEP); information and assistance to students with disabilities and their parents/guardians; and consultation with and provision of resource information and material regarding students with disabilities to their parents/guardians and other staff members. They are also responsible for the monitoring of student progress, participation in the review and revision of IEPs, and referring students to the IEP team.
- Read 180 and System 44 are intensive literacy curricula designed for struggling readers, English Language Learners (ELLs), and students with disabilities with reading difficulties. The District has adopted both programs as official interventions for these groups of students. Students at the School who score below certain benchmarks on Read 180 and System 44 diagnostic tests are routinely placed in Read 180 or System 44.

- Beginning in the spring of 2013 and continuing through the summer of 2014, the complainant communicated concerns to District staff regarding the placement of students on his caseload in Read 180 and System 44. The complainant communicated these concerns in a series of e-mails to and verbal conversations with several School and District administrators, including the Superintendent, and in at least two IEP meetings for students on his caseload.
- The complainant filed a UCP with the District on February XX, 2014, regarding his advocacy for students with disabilities on his caseload, their parents, and appropriate educational placements. Among other things, he alleged that “students with disabilities on [his] caseload and their parents have been discriminated against regarding their receiving appropriate special education services as well as their right to appropriate educational placement with their general education peers.”
- On March X, 2014, the Director gave the complainant a letter of reprimand from the District at a meeting, at which a union representative for the complainant’s union was also present.
- The letter of reprimand, dated February XX, 2014, and issued by the Director of Special Education for placement in the complainant’s personnel file, referred to a meeting held with the complainant on November X, 2013 and stated that at the meeting the complainant’s “argumentative stance in front of parents and students when the team had a differing opinion regarding appropriate and available services and supports for a student” was discussed. It stated that at the November X, 2013 meeting the complainant was “advised to discuss differences of opinion outside of the IEP meeting without parents and students present.”
- The letter stated that on January XX, 2014, the complainant “participated in an IEP meeting in which it was reported by several team members that [the complainant] was argumentative with colleagues regarding placement and services revolving around the District’s reading program Read 180/System 44.” The letter noted that on the IEP sent to the District’s special education office, the complainant wrote the following statements:

Presently the district does not have any SPED services at the high school level to further assist [student] with reading/decoding/fluency instruction. Her case carrier [complainant] has written a letter to the SPED director and superintendent of Curriculum/instruction about this but neither of them have replied. Her READ 180/System 44 placement is not considered an answer for her SPED needs in this area per the READ 180 director’s letter dated 11/22/13. XXX XXXXX was advised of his rights to call the state SPED office, the superintendent, and the school board regarding his right to get appropriate services for his daughter...At this point, [complainant] does not know how or by whom her Read 180 instruction will be carried out in high school....

- With respect to the written statement above, the letter of reprimand stated that “statements of this type are not appropriate for the development of an IEP and severely compromise the intent of the IEP team.” The letter further stated that the complainant’s conduct “negatively impacted the IEP team’s ability to work collaboratively with parents to develop an effective individual education program and creates a negative and hostile environment in which other IEP team members and schools are placed in an adversarial position[.]” The letter reminded the complainant that he was “one member of the team and [his] personal opinions may not be reflective of the entire team.”
- The letter of reprimand further stated that the complainant’s conduct violated Board Policy 4019.21, entitled “Professional Standards”, which states “Employee conduct should enhance the integrity of the District and advance the goals of the educational program,” and the Monterey County SELPA Procedures – Part 1, pages 72-75 (Procedures). The letter directed Complainant to remove content from the IEP 12 relating to [his] personal opinions and submit to site administrator for signature.” The letter stated that the complainant could “attach[] [his] statements on a separate sheet of paper as a ‘dissenting statement.’”
- The letter of reprimand further stated that “[i]n the future, all IEPs will be facilitated by the site administrator and the IEP documents reflective of the plan that was developed in the IEP team meeting, devoid of personal opinion as described in SELPA Policies and Procedures Part 1, pages 72-75.”
- The letter also stated that, “[i]n the event of potential disagreement among staff, a staffing meeting should be held prior to the IEP meeting to discuss concerns. If the IEP is a Transition meeting, a representative from the next [school/program] being proposed will be invited to the meeting to describe the programs and services being proposed.”
- The Director and Assistant Superintendent explained to OCR in interviews and the data response provided by the District stated that the letter of reprimand was issued as a step in a progressive discipline system for the complainant’s ongoing failure to conform his conduct to previous oral directives issued by School and District administrators.
- OCR found no written District policy regarding a procedure for pre-IEP staff meetings. The Director told OCR in an interview that staffing meetings usually occur on an ad hoc basis to discuss placement options in situations where there are irregularities in IEP testing results.
- In a letter to the Director, dated March X, 2014, among other things, the complainant disputed that he was argumentative at the January XX, 2014 IEP meeting. He stated that the administrator left the meeting early and that there were no arguments at the meeting.

- The complainant filed a second UCP on March XX, 2014, in which he alleged that the Assistant Principal had discriminated against the complainant's students by not allowing him to provide services to his students with severe reading disabilities who had first- or second-grade reading levels and would soon be entering high school. He also expressed concern that a pre-IEP meeting was held for one of his students, that he was first told that he could not discuss particular services for the student because a Read 180 placement meeting had not yet taken place, and then he was not invited to participate in the meeting.
- The complainant filed a third UCP on April XX, 2014, in which he alleged that his students with disabilities were being denied the services that they needed.
- On May X, 2014, the complainant sent an e-mail to two school board members. He stated that he had filed three UCPs with the Assistant Superintendent and had yet to receive a response, and was writing to them because he "[didn't know what is the best way to proceed." He explained that his three UCPs pertained to the discrimination against students with disabilities, including the denial of appropriate services.
- On May XX, 2014, the Assistant Superintendent issued a response to the complainant's February XX, 2014 UCP, in which, the following was agreed and determined:
  - Reading interventions could be conducted in the Individualized Studies Class along with other support activities;
  - Further pull-out of students was not allowed because of the outweighing need to keep students in the least restrictive environment but students with disabilities could be offered support for these classes through push-in services provided by the case carrier or through the Individualized Studies period;
  - The requested Rewards reading curriculum could be used if approval is sought and provided;
  - IEP meetings at which reading intervention services will be discussed are to be preceded with a staff meeting so that staff reach agreement on services to be offered to the student and parent prior to the IEP meeting;
  - Complainant will be invited to meetings at which students with disabilities reading assessment data is being evaluated to make placement decisions for students in subsequent school years;
  - Because Read 180/System 44 are District-adopted reading interventions, a student's failure to progress under either system does not provide a basis to remove them from the programs, place them in a different program, or use intervention materials other than those that are Board-adopted.
- On June XX, 2014, the Assistant Superintendent agreed to replace the letter of reprimand in the complainant's personnel file with a letter of direction, also dated

February XX, 2014, in response to a grievance the complainant separately filed through his union.

- The letter of direction and letter of reprimand are the same, except in the following respects, the District:
  - deleted the direct statements written by the complainant in the IEP meeting notes to which it objected and instead stated that the complainant “wrote statements which imply that the District was not providing appropriate services to the student.”
  - replaced its characterization of the complainant’s conduct as “argumentative” with colleagues with a characterization that he was “negative” during the January XX, 2014 meeting.
  - removed the statement that the complainant’s conduct had created a “hostile environment” and for “other schools” and instead used only the term “negative” to describe the impact the complainant’s conduct had on the IEP team’s work.
  - noted that the Procedures previously referenced “provide[d] examples of inappropriate and appropriate ways to use notes on an IEP.”
  - deleted the word “severely” from the prior letter, and provided that the complainant’s “statements of this type are not appropriate for the development of an IEP and compromise the intent of the IEP team.”
- The District stated that the letter of direction is a lower step in the progressive disciplinary system than a letter of reprimand and that it provided the letter of direction because it wanted the complainant to “modify his behavior in future IEP meetings.” The District also stated that in “agreeing to make the adjustments, the District made clear that the issues contained in the original letter of reprimand remained as well as the expectations for the employee to modify his approach to IEP reports and meetings.”
- In a letter to the District’s Human Resources Department, dated July X, 2014, the complainant expressed concern about the letter of direction. Among other things, he stated that he was not negative with his colleagues at the January XX, 2014 IEP meeting. He stated that the student for whom the IEP was held on January XX had triennial IEP results that showed how little her decoding skills had progressed after a year and a half in System 44, and wondered how she would be able to make progress in complex reading without intensive instruction in the area of decoding. With respect to his having been told not to disagree with the IEP team, he stated that he had been directed not to speak when he raised the issue that a “specific student with disabilities was being discriminated against, as were other [students with disabilities] who were being held back in the ‘cohort’ READ 180 group.” He also stated that “only [students with disabilities] were held back in READ 180 – not a single gen[eral] education student was ‘cohorted.’”

## **Summary and Resolution**

OCR's investigation revealed that the Complainant engaged in a protected activity and was subsequently subjected to an adverse action by the School district under circumstances that suggest a causal connection between the protected activity and the adverse action. The Complainant advocated for students with disabilities on his caseload in multiple e-mails to District administrators, including the Superintendent, at IEP meetings, and in formal uniform complaints to the District alleging that students with disabilities on his caseload were not receiving appropriate educational supports to progress in their education and were being discriminated against. Four days after the Complainant filed his first uniform complaint, the District responded by issuing the complainant disciplinary letters and placing them in his personnel file. Both the letter of reprimand and the functionally similar letter of direction that were placed in the complainant's personnel file are substantively the same and express disapproval of the complainant's conduct at IEP meetings and in his advocacy for additional or different services for his students. They also direct the Complainant to express any disagreements outside of the IEP process.

The Director who issued the letter of reprimand and the functionally similar letter of direction was knowledgeable about complainant's advocacy because the complainant had e-mailed her multiple times regarding his placement concerns for students with disabilities on his caseload and met with her and School staff on several occasions to discuss his concerns about his students' placement.

The District asserted as its legitimate, nonpretextual reason for issuing the disciplinary letters to the Complainant that he had been unduly disruptive with respect to his advocacy for students with disabilities.

Prior to concluding its investigation and to address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

Under the agreement, the District will, within specified timeframes: (1) remove the letter of reprimand, the letter of direction, and any attached or supporting documentation from the complainant's personnel file referencing any actions taken by the complainant that were referenced in either letter; and (2) provide training for District staff on resolving conflicts, investigating complaints, and the District's responsibilities under Section 504 and Title II with regard to the prohibition of retaliation against individuals who engage in protected activities, and the procedures involving placement decisions by a group of knowledgeable people.

Based on the commitments made in the attached resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. This should not be interpreted to address the District's compliance with any

other statutory or regulatory provision or to address any issues other than those addressed in this letter.

The resolution agreement is intended, when fully implemented, to ensure the District's compliance with Section 504 and Title II and their regulations, which are at issue in this case, and OCR will monitor the implementation of agreement until the District is in compliance with the Section 504 and Title and their regulations.

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

If you have any questions about this letter, please contact Zachary Pelchat, Team Leader, at (415) 486-5555.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure

cc: Thomas Manniello and Aria Link, Esq.