



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

January 16, 2015

Superintendent Gregg Haulk  
Office of the Superintendent  
Huntington Beach City School District  
20451 Craimer Lane  
Huntington Beach, California 92646

(In reply, please refer to case no. 09-14-1437.)

Dear Superintendent Haulk:

The U.S. Department of Education, Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint against the Huntington Beach City School District (District). The complainant alleged the District discriminated against a student<sup>1</sup> (Student) based on race and disability. The specific allegations OCR investigated were whether:

1. the Student was harassed by his peers based on race/national origin (Jewish), and the District failed to respond appropriately to notice of the harassment; and
2. the District failed to provide the Student a free appropriate public education (FAPE). Specifically, OCR considered whether (i) the Student's one-on-one aide failed to be of assistance to him in contravention of his IEP, and (ii) the District failed to consider whether changes to the Student's IEP were necessary as a result of bullying affecting his receipt of FAPE services.<sup>2</sup>

OCR opened this complaint for investigation under the authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and their respective implementing regulations. Title VI prohibits discrimination on the basis of race, color, and national origin, and 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 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The

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<sup>1</sup> OCR informed the District of the complainant's and Student's identities in our letter notifying it of the complaint. We are withholding them here to protect their privacy.

<sup>2</sup> OCR did not initially open on the allegation that the District failed to appropriately consider whether bullying the Student experienced impacted his FAPE. OCR expanded the scope of its investigation in light of preliminary evidence provided by the District.

District receives Department funds and is subject to the requirements of Title VI, Section 504, and Title II.

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 recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR it would voluntarily take steps to address the compliance concerns raised in the complaint. The District entered into an agreement to resolve the complaint on January 7, 2015. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Title VI, Section 504, or Title II.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and its regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color, or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Harassment of students who are members of a discrete religious group, including Jews, triggers a district's Title VI responsibilities when the harassment is based on the group members' actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices.

Under Title VI and the regulations, once a school district has notice of possible harassment between students on the bases of race, color, or national origin, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title VI and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew, or reasonably should have known, about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's duty whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The school must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student reports of harassment. The school also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In determining whether a hostile environment based on race, color, or national origin has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the school's program. OCR examines all the circumstances, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, race, and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the school; and other relevant factors.

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

Additionally, under Section 504, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team or the Section 504 team of a student with a disability to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving a FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying. In addition, when considering a change of placement, schools must continue to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

OCR's preliminary investigation showed the following:

- The Student is currently an XXXXXX grader at a District middle school (School). He is Jewish, and has disabilities. According to his IEP, he receives services for the qualifying disabilities of Other Health Impaired (ADHD) and XXXXXXXXXX XXXXXXXXXXXX.<sup>3</sup>
- The District conducted a Multidisciplinary Psycho-Educational Assessment and Functional Behavior Assessment in XXXXXX 2014, and convened a triennial IEP meeting on XXXX XX, 2014.
- The Student's IEP states that his "characteristics of ADHD impact his off-task and impulsive behaviors at school. In addition, [he] exhibits social-emotional difficulties that impact his ability to build or maintain satisfactory interpersonal relationships with peers and adults at school." According to the Multidisciplinary Assessment Report, the Student has had approximately 26 documented discipline incidents since he began XXXXX grade.<sup>4</sup> A Behavior Support Plan has been part of the Student's IEP since XXX 2013. The Behavior Support Plan includes supports to reduce off-task behavior, but not specifically to help him better socialize with his peers.
- Pursuant to his IEP, the Student is to receive Specialized Academic Instruction 228 minutes per week, and counseling services 20 minutes per week. His accommodations include modified tests; preferential seating; testing in alternative environment; extended deadlines for assignments; movement breaks for stress reduction; frequent checks for on-task behavior; verbal/visual cues for redirection; copies of notes; and the ability to meet with an administrator or the school psychologist for specific problems.
- The Student's parents alleged the Student's peers harassed him during the 2013-14 school year using negative stereotypes about Jews, and constantly verbally and physically bullied him more generally for the past two years. They said the District failed to respond to their and the Student's reports of this conduct; consequently, the Student often responded inappropriately to the conduct, resulting in discipline and, sometimes, missed instructional time. The Student has also experienced emotional trauma, they said, XXX XXXXX XX XXX XXXXXXXXXXX XXXXXXX.
- OCR's preliminary investigation showed the School officials were notified of several alleged instances of language directed at the Student potentially implicating his Jewish heritage during the 2013-14 school year.
- Specifically, the Student's parents notified one of the School's then-assistant principals (Assistant Principal) that a student (Student One) had, upon hearing the Student celebrated Hanukkah, told the Student that Student One's grandparents

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<sup>3</sup> Notes from the Student's June 2014 IEP indicate the Student's parents did not agree with the category of XXXXXXXXXXX XXXXXXXXXXXX. The record shows the parents were given notice of procedural safeguards.

<sup>4</sup> Most of these incidents did not result in suspension or other significant removal from the classroom environment.

were Nazis, derided the Student with words including “Jew Bag” and “cheap,” and thrown pennies at the Student. This incident allegedly occurred in XXXXXXXX 2013, and the Student’s parents reported it in XXXXX 2014. District records show that, in response, the Assistant Principal interviewed Student One, who denied the conduct; the classroom teacher, who said she had never heard the accused student talk about Jews; and the Student, who told her he was not having problems with Student One at that time. A notation from the Assistant Principal’s notes states she encouraged the Student to tell the teacher about any problems.

- The Student’s parents notified the Assistant Principal by email, also in XXXXX 2014, that Student One had called the Student “Jew” or “Jew bag” on several subsequent occasions and, in a separate incident, thrown pennies at the Student. District records indicate that, shortly after receiving this report, the Assistant Principal interviewed nearly all of the students in the Student’s class, and none of them reported hearing the word “Jew” or seeing pennies thrown. The Assistant Principal emailed the Student’s father the same day, and informed him that her investigation did not substantiate the allegation, and that the Student himself told her no one had used the word “Jew” in the classroom. She wrote, “I am trying to help support [the Student] to feel safe at school and to follow up with allegations.”
- The Student’s parents also informed the Assistant Principal in XXXX 2014 that several students told “racist Jewish jokes” to and about the Student on the playground. These allegedly included, “What do you call a Jew after a fire? Smoke.” School records suggest this alleged conduct occurred while several students engaged in “rap battles.” The record does not establish whether the specific language alleged by the Student’s parents was used; however, it does suggest that several students, including the Student, used inappropriate racial language. During this incident, the Student left school before it was dismissed, missing class time; the Student’s parents alleged this was because the Student was offended by jokes about Jews. The Student was disciplined for leaving school without permission. The evidence did not show the District took action in response to the students’ racial language.
- The evidence also showed that a witness to a fight involving the Student in XXXXXXXX 2014 reported hearing someone make a statement about punching the Student’s “Jew nose,” and the witness to a fight involving the Student in XXXXX 2014 reportedly “heard people [he] didn’t know say beat that Jew’s butt.” (Both fights are discussed in more detail below.) The evidence did not reflect action by the District in response to these specific comments, apparently made by unnamed witnesses to the fights.
- Regarding non-racial bullying, the Student’s parents alleged that students regularly verbally taunt and physically harass the Student. Among other reports, the Student’s father alleged that in XXXX 2012 another student (Student Two) physically assaulted the Student, resulting in physical injuries to the Student requiring medical care; the assailant was reportedly expelled. He alleged that in XXXXXXX 2013, the

Student's classmates: slammed the Student's head in a classroom door, continuously demanded that the Student fight, and physically assaulted him. The Student's father acknowledged that the Student responded to many of these incidents with physical violence.

- The Student's parents alleged to OCR that many of the Student's peers continued to taunt the Student on a daily basis during the 2013-14 school year. They reported several incidents to School officials. Specifically, in XXXXXXXX 2013, the Student's father informed the Student's teacher via email that Student One frequently kicked the Student's chair and told him he hated him. He wrote, "Of course, [the Student] doesn't need any distractions. He has enough attention issues."
- School records from XXXXXXXX XX, 2014 reflect the Student and another student (Student Three) both received a one-day in-house suspension for physically fighting twice on the same day. The following week, the Student's mother emailed the Assistant Principal and the Principal that Student Three continued to bother the Student daily. She wrote, "The tension is escalating not only between the 2 boys but with their friends as well....Is there another math class that [the Student] can transfer to...?" The Assistant Principal responded that both boys needed that particular class, but she had met with them, and they together agreed they would not sit next to each other or exchange negative words with or about each other. She invited the Student's mother to contact her with further concerns.
- On XXXXX XX, 2014, the Student's parents complained to the Assistant Principal that the Student was physically assaulted by another student (Student Four). OCR's review showed that, on this date, several sixth grade girls complained to the School about the Student and two other boys. Their written complaints state the boys harassed them every day at lunch for over a month by repeatedly calling them names including lesbians, rapists, and sluts, and targeting one girl in particular by making fun of her body. School records indicate a female classmate of the Student attempted to intervene on the younger girls' behalf, and the Student pushed or hit her. Student Four responded by pushing the Student to the ground twice, and punching him in the shoulder. Discipline records show that, in response to the physical altercation, Student Four received in-house suspension and lunch detention, the female student received lunch detention, and the Student received two lunch detentions for his physical contact with the female student.
- The Assistant Principal made the three boys who were harassing the sixth grade girls, including the Student, apologize. The Assistant Principal wrote in an email to the Student's mother that the students "were very mature and admitted they had been saying not nice things to a sixth grade girl....So as a consequence I felt it would be appropriate for them to SINCERELY apologize to the girl and the three boys received warnings that if I heard the name calling continues, then there will be disciplinary consequences...the young lady felt the apologies were genuine and it was quite sweet, she said she forgives them." The Assistant Principal apparently did not inform the Student's parents of the sexually harassing nature of the incident. On

other occasions, the Student was found to have “pantsed” another student, and given a “sexual hug.” Records reflect the Student was disciplined for this conduct, but not that the School addressed the sexually harassing aspects of his behavior.

- In XXXXX XXX XXXXXXXX 2014, the complainant informed the Assistant Principal by email that Student Three and Student Four had threatened the Student with physical assault. By letter dated XXXXX XX, 2014, the complainant informed the Assistant Principal that the Student was in fear for his safety while at school, due to physical attacks and threats of attacks. He also complained of cyber harassment by Student Two, who was expelled for assaulting the Student the previous year. The complainant provided evidence of an online exchange between Student Two and one of the Student’s friends, in which Student Two calls the Student and the friend “gay” and “faggot.” OCR’s preliminary investigation did not establish how the School responded to these reports.
- District records reflect that on XXXXX XX, 2014, the Student’s father told the Assistant Principal that, on the way home from school, some students tried to trick the Student into going to a location where Student Two was waiting to fight him; the email states the Student “hid in some bushes...on the way home,” and called an adult to get him. The Assistant Principal investigated this allegation. Her investigation, including interviews with other students, did not establish a fight was planned, or that Student Two was present.
- District records show that on XXX XX, 2014, the Student reported to the administration that two students were unkind to him during Physical Education. During the Assistant Principal’s investigation, the other students accused the Student of being unkind. The Assistant Principal had a conference with all of the students.
- The Student’s parents notified School officials via email in XXXXX 2014 that the Student had been called, on several occasions, “gay” and “faggot.”
- In XXXXXX 2014, the Student’s parents provided the School with a chart detailing several specific instances of alleged bullying and harassment during the 2012-13 and 2013-14 school years.
- In connection with the Student’s spring 2014 Functional Behavior Assessment, his teacher reported to the assessor that the Student constantly “baited and harassed” Student One and made mocking comments to Student Three. She wrote that the Student repeatedly complained on a particular day in XXX 2014 that Student One was threatening to him, but that both boys were seated next to her, and neither she nor her aide heard the alleged comments.
- From XXXXX XX, 2014 until the end of the school year, the District assigned an instructional aide (Aide) to the Student. The District said the purpose of the assignment was to “monitor and provide support for academics, socialization and

safety for any student the aide came in contact with during the assignment.” The assignment of the Aide was not part of the Student’s IEP. The Assistant Principal informed the Student’s parents of this by email on XXXXX XX, 2014. She wrote, “I have received approval from the district office to have additional adult support to ensure [his] safety. This will begin tomorrow morning XXXXXXX.” In this email, the Assistant Principal encouraged the Student and his parents to continue to communicate with her about any concerns.

- The Aide took notes regarding her observations of the Student. She also recorded, less extensively, other students’ conduct directed toward the Student. The purpose of her notes is not clear. The complainant said that the Aide never intervened when incidents occurred, and he felt the Aide’s observation and recording of the Student’s behavior was punitive to the Student. However, in general, the Student was not disciplined for the behavior she recorded.
- The Aide’s notes record harassing conduct by peers directed at the Student during the month of XXX, including calling the Student a “Jew”, asking the Student about wearing a yarmulke, and telling the Student to “come out of the closet.” The Aide’s notes also record misconduct of the Student, including making several racial comments to an African American student, racial comments to a Latino student, and comments of a sexual nature to a female student. On one occasion, the Student and a peer allegedly called each other “bitches.” The District’s records do not show that School officials responded to the race- or sex-based nature of these incidents.
- An XXXXXX 2014 report prepared by the Student’s X---paragraph redacted---X.
- X---paragraph redacted---X.
- District records show that at a XXXX XX, 2014 IEP meeting, the Student’s parents requested the District pay for the Student’s attendance at a social skills program he planned to attend over the summer. The XXXXXXXXXXXX XXXXXX states the Student has attended the XXXXXX XXXX XXXXX XXXX, and throughout his time in the program his goals have related primarily to “controlling his impulses, understanding social cues, and being able to tell a story in ten words or less.” The parents also requested reimbursement for math tutoring they obtained during the school year.
- In a XXXX X, 2014 letter, the District denied these requests. The denial letter explained that the Student’s IEP team recommended the Student attend the District’s social skills program for 120 hours over the summer; the letter stated, “the staff are experienced and trained to provide instruction in the areas of social skills, and will continue to work on his social skills goal so that current progress and skill momentum are not lost during the summer break.” Regarding the math tutoring, the letter stated the Student had received passing grades in all four quarters of the school year, had improved in that subject over the course of the year, and had received an “additional period of specialized instruction in the area of math and

received and...met his IEP goal in the area of math application.” The letter states that the District considered, in reaching its decisions, the parents input, discussion at the Student’s IEP meetings, the report from the Multidisciplinary Assessment, review of the Student’s files and available records and assessments, and professional judgment of credentialed staff. Notice of procedural safeguards were provided with the letter.

- The Student’s IEP now requires an aide shadow him at school. The Student’s father reported that assignment of the aide has helped reduce the incidents of bullying and harassment.

As noted above, under OCR’s procedures, 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 completion of OCR’s investigation, the District entered into the attached agreement to resolve the allegations in the complaint. The agreement requires that the District: develop and implement a plan to assess and monitor the climate at the School with respect to harassment; provide investigative training to District and school administrators; provide student instruction about harassment; communicate with School parents about the District’s prohibition of harassment; continue to assign an aide to observe the Student’s interactions with other students and intervene as appropriate; convene an IEP meeting to consider (a) the potential effects of bullying and harassment on the Student’s educational program, taking into account guidelines included in the Dear Colleague letter issued by OCR on October 21, 2014, (b) whether bullying and harassment of the Student is triggered by conduct that is a manifestation of his disabilities, and (c) whether the Student has sufficient supports to address disability-based challenges in socializing with peers; and assign a staff person with whom the Student feels comfortable as his primary contact when he experiences problems with other students.

Because the District voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Title VI, Section 504 or Title II. OCR will monitor the District’s implementation of the agreement. 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. OCR is closing this complaint as of the date of this letter, and notifying the complainant simultaneously. 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 whether or not OCR finds a violation.

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 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.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact Alvaro Soria, OCR attorney, at (415) 486-5580, or Suzanne Taylor, OCR attorney, at (415) 486-5561.

Sincerely,

/s/

Anamaria Loya  
Team Leader

Enclosure