



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

August 21, 2015

Deborah Bettencourt
Superintendent
Folsom-Cordova Unified School District
1965 Birkmont Drive
Rancho Cordova, California 95742

(In reply, please refer to case no. 09-14-1444.)

Dear Superintendent Bettencourt:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Folsom Unified School District (District). OCR began an investigation on the following issues:

1. Whether the District failed to provide the Student¹ with a free, appropriate public education (FAPE) by:
 - a. failing to evaluate the Student in a timely manner in all areas of suspected disability even though it had reason to believe that the Student needed special education or related services because of a disability,
 - b. utilizing response to intervention (RTI) services rather than providing special education and related services to the Student; and,
 - c. failing to provide the Parents with procedural safeguards when it did not give the Parents an opportunity for an impartial hearing.
2. Whether the District failed to respond adequately to an internal complaint made on June X, 2014, stating that the Student and Parents had been subjected to harassment by staff and that the Student was discriminated against based on disability.
3. Whether the District failed to respond appropriately and effectively to notice of the harassment when the Student was subjected to harassment by other students based on disability.

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

OCR conducted a preliminary 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 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 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives funds from the Department, and is a public school district, and is subject to Section 504, Title II, and the regulations.

OCR began the investigative process by gathering information from the Complainant, the Parents and the District. Before OCR had completed its investigation, the District expressed an interest in entering into a resolution agreement. Under OCR's complaint resolution procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. On August 21, 2015, the District submitted an agreement which, when implemented, will resolve those allegations in this complaint. The District has also provided OCR with information to show that it has begun to make changes prescribed in the attached resolution agreement. Additionally, the District has already taken steps to resolve the complaint and trained its staff on Section 504 child find procedures, has modified its mutual Respect and Civility Complaint Procedures which was approved by the school board. The District is also developing programs to address peer-harassment and is evaluating the Student's needs for counseling. For this reason, OCR did not complete its investigation or reach findings or conclusions as to whether the District had failed to comply with Section 504 and Title II in connection with those allegations.

The applicable legal standards and basis for OCR's resolution are summarized below.

Issue 1: Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by:

- a. failing to evaluate the Student in a timely manner in all areas of suspected disability even though it had reason to believe that the Student needed special education or related services because of a disability,*
- b. utilizing response to intervention (RTI) services rather than providing special education and related services to the Student; and,*
- c. failing to provide the Parents with procedural safeguards when it did not give the Parents an opportunity for an impartial hearing.*

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.

Section 104.35(a) regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

The Complainant alleged that the District failed to evaluate the Student in a timely manner when the District had reason to suspect that the Student had a disability. The Parents provided the District with documentation of the Student's disability, yet the District refused to initially evaluate under either Section 504 or IDEA. The District continued to explain that the Student would be offered Response to Intervention (RTI) services rather than provide service under either Section 504 or IDEA. The Complainant alleged that the Student did not have a specific learning disability but rather, behavior and emotional needs that were not being addressed through the RTI services which were being provided.

OCR determined that the resolution agreement described below, when implemented, will fully resolve this issue. OCR therefore did not complete its investigation, and made no findings as to the District's compliance with Section 504 and Title II in connection with this allegation.

Issue 2: Whether the District failed to respond adequately to an internal complaint made on June X, 2014, stating that the Student and Parents had been subjected to harassment by staff and that the Student was discriminated against based on disability.

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging

disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents of elementary and secondary school students, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

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 District must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

The Complainant alleged that she filed a complaint with the District under the Civility and Mutual Respect policy and that the District failed to respond appropriately and effectively to the Complaint. The Complainant alleged that no investigation was conducted and that she received no written response from the District.

OCR determined that the resolution agreement described below, when implemented, will fully resolve this issue. OCR therefore did not complete its investigation, and made no findings as to the District's compliance with Section 504 and Title II in connection with this allegation.

Issue 3: Whether the District failed to respond appropriately and effectively to notice of the harassment when the Student was subjected to harassment by other students based on disability.

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. Districts are responsible under Section 504, Title II and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in

the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II, and the regulations, once a District has notice of possible disability-based harassment between students, 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 District may violate Section 504, Title II 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 responsibility 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 District must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

The Section 504 regulations, 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 prohibit Districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected 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.

The complaint alleged that the Student was subjected to harassment by her peers in her XXXXXXXX class and that the District failed to respond appropriately and effectively to notice of the harassment.

The District and the Parents provided information to show that the Student's XXXXXXXX teacher immediately met with the alleged harassers and took appropriate steps to prevent the harassment from reoccurring; however, the concerns remained regarding a remedy to the Student who was subjected to the harassment.

OCR determined that the resolution agreement described below, when implemented, will fully resolve this issue. OCR therefore did not complete its investigation, and made no findings as to the District's compliance with Section 504 and Title II in connection with this allegation.

Resolution Agreement

Prior to the completion of OCR's investigation, the District expressed an interest in resolving the complaint through a Resolution Agreement (Agreement) pursuant to Section 302 of OCR's Case Processing Manual. OCR determined that it was appropriate to resolve the complaint under this section.

On August 21, 2015, without admitting to any violation of the law, the District provided OCR with a copy of the signed enclosed agreement to resolve this case. Pursuant to the Agreement, the District will revise and publish its policies and procedures regarding Section 504, IDEA and the use of RTI services and conduct trainings on the new policies and procedures for staff. The District will hold an IEP meeting for the Student to determine whether she needs any compensatory services for the 2013-2014 school year. The District has already revised its use of the Mutual Civility and Respect Policy and has trained its staff on conducting investigations alleging disability-based discrimination. The District is also in the process of reviewing and revising its harassment policies and will train its staff and students. OCR has determined that the implementation of this Agreement will resolve the allegations made in this complaint.

Based upon the signed Agreement, OCR is closing the investigative phase of this complaint as of the date of this letter. OCR will monitor the implementation of the agreement, and is informing the Complainant by concurrent letter. The Complainant may have a right to file a private suit in federal court 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 records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

OCR would like to thank XXXX XXXXXXXX for her assistance in resolving this matter. If you have any questions about this case, please contact Jessica Plitt, Civil Rights Attorney, at (415) 486-5525.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure