



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

May 8, 2015

Christopher J. Steinhauser
Superintendent
Long Beach Unified School District
1515 Hughes Way
Long Beach, California 90810

(In reply, please refer to #09-15-1069.)

Dear Superintendent Steinhauser:

On November 12, 2014, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint against Long Beach Unified School District (District) alleging discrimination based on disability¹. The allegations accepted for resolution by OCR were:

In the 2013-14 and 2014-15 school years:

1. The District provided the Students in the special day class kindergarten class at Prisk Elementary School with substantially less instructional time than was provided to the general education kindergarten class and;
2. Qualified kindergarten students with disabilities were not allowed to participate in the "Kinder Camp" that was made available to general education kindergarten students at Prisk Elementary School.

OCR enforces Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. These laws prohibit discrimination on the basis of race, color, national origin, sex, disability and age in programs and activities operated by

¹ OCR previously notified you of the complainant's identity and is withholding it from this letter to protect her identity.

recipients of Federal financial assistance. Additionally, OCR enforces the Boy Scouts of America Equal Access Act, which addresses equal access to school facilities and certain other youth groups. The Recipient receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

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) and 28 C.F.R. §35.130(b)(1) a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service, or 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.

The Title II regulations, at 28 C.F.R. §35.130(b)(7), require public entities to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

OCR received documentation from the Complainant concerning the shorter schedule for special day class (SDC) kindergarten students and denial of an opportunity for students in the SDC to participate in the after school program (Kinder Camp). The information concerning the length of school day was also confirmed by OCR reviewing the web site for William F. Prisk Elementary School which showed that the general education kindergarten class and the SDC kindergarten classes both started at 9:00 am, the general education kindergarten was dismissed at 1:30 pm while the SDC kindergarten was dismissed 50 minutes earlier at 12:40 pm. On "minimum" days, the SDC kindergarten was dismissed at 12:20pm while the regular education kindergarten class maintained the 1:30pm dismissal time.

OCR discussed these allegations with the District's Director of Special Education. He reviewed the information, conducted his own inquiries and reported to OCR that he identified several schools where there were schedule discrepancies between SDC classes and general education classes serving the same grades and age groups. The Director of Special Education reported to OCR that the SDC classes were receiving the state statutory minimum instructional time for kindergarten and elementary schools. The Director attributed the disparities to allowing teaching staff to set the schedules for each class without coordination by the school administration. He also acknowledged that afterschool programs may not always include students with disabilities who were otherwise qualified to participate.

As explained below, prior to conclusion of the investigation, OCR accepted a resolution agreement from the District that resolves the complaint allegations. Therefore, OCR is closing the investigation of this complaint as the date of this letter.

To address the first allegation, the District conducted an audit of all 2013-14 and 2014-15 kindergarten instructional minutes and identified the sites that did not provide the same number of instructional minutes to SDC classes and general education classes. Parents whose children were still attending school in the District and may have received fewer instructional minutes will be provided an opportunity for compensatory hours. The District will take steps to ensure in the future that all students in the same grade will receive the same number of instructional minutes regardless of disability or educational placement, unless a shorter day is provided for by the Student's IEP team because of the individual needs of the student.

As to the second allegation, the resolution agreement provides that all students will have access to school-based interventions and that notice will be provided that all elementary SDC students are eligible to attend afterschool programs at their assigned schools, to the maximum extent appropriate to the needs of the individual student with or without related aids and services as needed.

OCR has determined that the actions taken by the District and its commitments expressed in the enclosed Agreement, when fully implemented, will resolve the issues in this complaint. OCR will monitor the implementation of the enclosed Agreement and may reopen the investigation if the District does not implement the provisions of the Agreement.

This concludes OCR's consideration of this complaint. We are closing the complaint as of the date of this letter. We are concurrently notifying the Complainant.

The 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.

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.

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If you have any questions about this letter please call our office at (415) 486-5555.

Sincerely,

/s/

Arthur Zeidman
Regional Director

Enclosure