



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

July 23, 2015

Mathew Holton
Superintendent
Chaffey Joint Union High School District
211 West Fifth Street
Ontario, CA 91762

(In reply, please refer to case no. 09-15-1166.)

Dear Superintendent Holton:

On May 22, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Chaffey Joint Union High School District (Recipient). The complaint alleged discrimination on the basis of disability. Specifically, OCR investigated whether the Recipient failed to provide the Student with a free appropriate public education (FAPE) when an instructor failed to fully implement the Student's Section 504 plan and whether the Student was subjected to harassment by a Recipient employee based on disability, and whether the Recipient failed to respond appropriately and effectively to notice of the harassment.¹

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) 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 under Title II of the Americans with Disabilities Act of 1990 (Title II) over disability discrimination complaints filed against public educational entities. The Recipient receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

Under Article III, Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the Recipient expressed interest in resolving the allegations through a voluntary resolution agreement (Resolution Agreement). This letter summarizes the applicable legal standards and how the complaint was resolved.

I. Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public schools 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

¹ OCR informed the Recipient of the Student's identity in our letter notifying you of the complaint. We are withholding her name here to protect her privacy.

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 34 C.F.R. §§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.

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. School districts are responsible under Section 504 and Title II 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.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee, the district is responsible for determining what occurred and responding appropriately. 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 conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, 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. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

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 district does not tolerate harassment and will be responsive to any student reports of

harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include issuance of notice that disability discrimination is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7[b] and 28 C.F.R. §35.107[b]). The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §104.7[a] and 28 C.F.R. §35.107[a]).

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, and employees, including where to file complaints; application of the procedure to complaints alleging harassment 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 harassment and to correct its discriminatory effects.

II. Resolution

The Recipient, without admitting any violation of federal law, voluntarily agreed to enter into the attached Resolution Agreement with OCR to resolve the complaint. The Resolution Agreement requires the Recipient to draft written guidance and conduct training on the District's responsibilities with respect to confidentiality and harassment involving students with disabilities. The District must also conduct training on its policies and procedures for providing a FAPE under Section 504 and Title II.

OCR has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, OCR is closing this complaint as of the date of this letter. OCR will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the Recipient does not comply with the Resolution Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, this document and related records may be released upon 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.

If you have any questions regarding this letter, please contact Abony Alexander, Civil Rights Attorney, at (415) 486-5590, Abony.Alexander@ed.gov or Nancy Sablan, Equal Opportunity Specialist, at (415) 486-5549, Nancy.F.Sablan@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Kelly Whelan, Director of Special Education (by email only)