



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

June 29, 2015

James R. Tarwater, Ed.D.
Superintendent
Lake Tahoe Unified School District
1021 Al Tahoe Blvd.
South Lake Tahoe, California 96150

(In reply, please refer to case number 09-15-1217.)

Dear Superintendent Tarwater:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Lake Tahoe Unified School District. The complaint alleged that the District discriminated against the Student¹ on the basis of disability. OCR accepted the following issue for investigation:

Whether a District employee (Employee) harassed the Student on the basis of his disability by calling the Student, in the presence of others at school, “psycho,” “delusional,” and “crazy;” and whether the District responded promptly and effectively to the Complainant’s March X, 2015 complaint about the alleged harassment.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

OCR gathered evidence through interviews with the Complainant, the Student, another student, and District personnel. OCR also reviewed documents provided by the District and the Complainant. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Legal Standards

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)

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

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 circumstances. However, in all cases the response must be tailored to stop the harassment, eliminate the hostile environment if one has been created, and address the problems experienced by the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

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 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)).

Factual Summary and Determination

The Student, the Complainant's son, is an individual with disabilities and was 14 years old at the time the OCR complaint was filed. He and another student over whom the Complainant has guardianship (Student 2) both attended South Lake Tahoe High School (School) during the 2014-15 school year.

On the morning of March X, 2015, both the Student and Student 2 were in the School office area. The Student was referred to the office due to a dress code issue and Student 2 was being searched for an unrelated suspected disciplinary concern. When the Student learned that Student 2 was being searched in a closed office he became upset and protested to administrators and staff present in the open office area. The Student also called his parents and was told that they were coming to the School. The Student confirmed to OCR that he told staff and administrators to stop searching Student 2 and that he cursed. The Student stated that at some point the Employee approached him and called him "crazy," "delusional," and "psycho." Ultimately, the parents arrived at the School, loudly expressed their concern about the search, and withdrew both students from the School.

Following this incident, the Complainant went to the District office on the same day to file a complaint about the alleged statements made by the Employee toward the Student.² The Assistant Superintendent was designated to investigate the complaint under the District's Uniform Complaint

² The Complainant also complained about the search of Student 2.

Procedure, AP 1312.3. OCR requested all documentation of the investigation of the alleged statements made by the Employee. The documentation consisted of two email statements submitted by the Student and Student 2,³ a brief written statement independently prepared by the Employee, written statements prepared by two School employees (Employee 1 and Employee 2) who were present in the office that day, and brief handwritten notes of a follow up conversation the Assistant Superintendent had with Employee 1. The Assistant Superintendent told OCR that she also spoke briefly to the Employee about what had occurred, but did not document the conversation.

Both the Student's and Student 2's email statements indicated that the Employee made the statements, as alleged. The Employee confirmed in his written statement that he spoke with the Student in the outer office on the day in question, but noted that he only asked the Student to watch his language because the language he was using was inappropriate at school. The Assistant Superintendent recalled that during her conversation with the Employee, he specifically denied making the statements alleged by the Complainant. Employee 1's written statement focused solely on what occurred after the Student's parents arrived at the School; it contained no information about the interchange between the Employee and the Student. The brief notes of the follow-up conversation that the Assistant Superintendent had with Employee 1 state that Employee 1 indicated that the Employee told the Student to be more respectful with the language he was using, but never called the Student "psycho-delusional." Employee 2's written statement noted that at some point the Employee stepped in to assist with the situation involving the Student, but did not specify what he said to the Student. There was no follow-up conversation by the Assistant Superintendent with Employee 2.

The District issued a written decision by letter dated April X, 2015. With respect to the issue of the alleged statements made by the Employee toward the Student, the District found that a determination on what was actually said to the Student was inconclusive. The Assistant Superintendent told OCR that she did not feel that she could reach a conclusion because of the conflicting perspectives between the two students and the Employee. She stated that she understood that the only other person near enough to witness the conversation was Employee 1, and while Employee 1 did not hear the alleged statements she was also working and may have not been paying close attention.

In addition to reviewing the District's investigation, OCR conducted additional interviews regarding the interaction between the Employee and the Student on March X, 2015. OCR interviewed the Student, the Employee, Employee 1, Employee 2, two other employees present that day (Employee 3 and Employee 4), the Assistant Principal, and another student who was in the office at the time (Student 3). The Student told OCR that the Employee made the statements to him, as alleged. The Employee denied making any of the alleged statements, but confirmed that he asked the Student to watch his language because the type of language he was using was inappropriate at school. Employee 4 and the Assistant Principal did not observe the interaction between the Student and the Employee. However, Employee 1, Employee 2, Employee 3, and Student 3 all stated to OCR that they had observed the interaction and heard what was said by the Employee. None of these witnesses stated that the Employee called the Student "crazy," "delusional," or "psycho."

After reviewing the evidence, OCR found that the District has adopted a complaint procedure, AP 1312.3, that covers allegations of disability discrimination, including disability-based harassment, filed

³ The Assistant Superintendent offered to interview both students, but the Complainant chose to have them submit written statements via email instead.

by students against employees. The current version of AP 1312.3 was adopted in January 2015. AP 1312.3, as written, identifies the designated compliance officer and offers, but does not require, informal resolution of the complaint. The procedure prohibits retaliation, contains provisions addressing confidentiality, and contains reasonably prompt time frames for the major stages in the process. For a formal complaint, AP 1312.3: provides for interim measures; provides for an investigation, including opportunities for the complainant to present evidence or information leading to evidence to support the allegations; uses a preponderance of the evidence standard; results in a written investigative report and decision; requires corrective action, if warranted, for the subject of the complaint, the individual found to have engaged in discrimination, and the campus community; requires written notice to the complainant of the determination and corrective actions, if any; and describes the complainant's right to appeal. AP 1312.3 specifically provides that employees designated to investigate complaints must be trained on current state and federal laws and regulations governing the program, applicable processes for investigating discrimination complaints, applicable standards for reaching decisions on complaints, and appropriate corrective measures.

OCR has determined that the current AP 1312.3, as written, meets Section 504 and Title II requirements, at 34 C.F.R. §104.7(b) and 28 C.F.R. §35.107(b), relating to a school district's obligation to provide for the prompt and equitable resolution of disability harassment complaints. However, OCR noted that the current AP 1312.3 is not yet appropriately published, as required by the regulations. Even though the District provides notice of the procedure through various means including an Annual Notification to parents and students, copies that are located in District offices, and the District's website, the notice information is currently based on the previous version of AP 1312.3 and does not reflect the current process. In addition, some notices as well as the current complaint form used by the District combine information about complaints filed under AP 1312.3 and complaints filed under other complaint procedures in a manner that is not consistent with the provisions of AP 1312.3. This could lead to confusion on the part of complainants about what procedure applies to their complaint.

As noted above, under Section 504, Title II, and the regulations, if the student is alleged to have been harassed based on disability by an employee, the District is responsible for determining what occurred and responding appropriately. With respect to the District's response to the internal complaint filed by the Complainant, OCR found that the response was sufficiently prompt. The Complainant filed her complaint on March X, 2015, and the Assistant Superintendent issued written findings to her by letter dated April X. Thus, the investigation was completed in less than 30 days.

However, OCR concluded that the District's response to the Complainant's March X, 2015, complaint was not appropriate or effective in that its investigation was not sufficient to determine whether, in fact, disability harassment had occurred or not. Specifically, the investigation did not include thorough interviews of or statements by key witnesses to the interaction between the Student and the Employee on the day in question, the statements obtained were not designed to elicit evidence necessary to reach a determination about whether the alleged statements were or were not made, and the interviews or conversations that were conducted were not consistently documented. As a result, the District failed to reach a determination about whether disability-based harassment had or had not occurred.

Accordingly, OCR determined that while the District responded promptly, it failed to respond appropriately and effectively to the Complainant's internal complaint concerning disability-based harassment. OCR notes that while these defects raised concerns about the District's procedural response to disability-based harassment complaints, it did not find that the District failed to address

disability-based harassment by the Employee against the Student. This is because OCR supplemented the District's investigation and determined that disability-based harassment did not occur.

Based on its review of the factual information gathered by the District during its complaint process, along with the information gathered during OCR's subsequent investigation, OCR determined that the preponderance of the evidence did not support a finding that the Student was subjected to disability-based harassment by the Employee. The facts gathered through the District's and OCR's investigations did not corroborate the Student's allegation that the Employee called him "psycho," "delusional," or "crazy," as alleged. The Employee denied making any such statements, and no individual spoken to by the District or interviewed by OCR indicated that they witnessed him making these statements to the Student. These witnesses included School staff and one student who confirmed that they observed the entire interaction between the Employee and the Student on March X, 2015, and did not hear these statements being made.

Resolution

In conclusion, OCR determined that the District did not respond adequately to the Complainant's internal complaint filed with the District on March X, 2015 in several respects. Based on its review of the District's investigation, along with its own supplementary investigation, OCR found, however, that the Employee did not harass the Student on the basis of disability, as alleged. Finally, OCR determined that the current version of AP 1312.3 is not yet appropriately published and that its related complaint form may be misleading or confusing to complainants in some respects.

The District agreed to address the outstanding compliance concerns through the attached Resolution Agreement. The District agreed to review and revise, as necessary, each publication, notice, complaint form, and attachment that describes AR 1312.3 to ensure that the information conveyed it is consistent with the revisions adopted in January 2015. The District also agreed to take effective action, through training or written guidance, to ensure that any individual designated to investigate discrimination, including harassment, complaints under AR 1312.3 is knowledgeable about District policy, applicable legal standards, conducting investigations, standards for analyzing evidence and reaching determinations, and appropriate corrective measures.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Resolution Agreement through completion. OCR is informing the Complainant of the complaint resolution by concurrent letter. Note that the Complainant may file a private lawsuit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual case 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. It 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 individual 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.

OCR appreciates the courtesy and cooperation extended by you and your staff, particularly Ivone Larson, Assistant Superintendent, during the complaint resolution process. If you have any questions, please contact Julie Baenziger, at (415) 486-5502, or me, at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Attachment

Cc: Ivone Larson
Assistant Superintendent