



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

August 24, 2015

Dr. David Hansen
Superintendent
Riverside Unified School District
3380 14th Street
Riverside, CA 92501

(In reply, please refer to case no. 09-15-1233.)

Dear Superintendent Hansen:

On March 12, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Riverside Unified School District (District). OCR understood the complaint to allege that the Recipient failed to provide equally effective communication to a Student during an after school program by failing to provide a qualified sign language interpreter when the regularly assigned interpreter was not available; and that the Complainant was retaliated against when a District employee contacted Child Protective Services after the Complainant advocated on behalf of the Student's special education needs.¹

OCR enforces Section 504 of the Rehabilitation Act of 1973 which 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 over disability discrimination complaints filed against public educational entities. The District receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

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

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

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.

Under 34 C.F.R. §104.37, a school district must provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation. These services and activities may include counseling, physical recreational athletics, transportation, special interest groups or clubs, and other recreational activities.

The Title II regulations, at 28 C.F.R. §35.160(a), require a school district to take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. The regulations at 28 C.F.R. §35.160(b)(1) further requires a school district to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. In determining what type of auxiliary aid and service is necessary, 28 C.F.R. §35.160(b)(2) requires that the school district give primary consideration to the requests of the individual with disabilities.

Communication is construed broadly to mean the transfer of information. In determining whether communication is as effective as that provided to non-disabled persons, OCR looks at the timeliness of the delivery, the accuracy of the communication, and whether the manner and medium used are appropriate to the significance of the message and the abilities of the disabled individual.

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 school 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.

OCR began gathering evidence through reviewing documentation provided by the District and the Complainant, and interviews with the District representative and the Complainant.

During the 2014-2015 school year, the Student was in fourth grade. The Student is an individual with a disability and qualifies for an IEP. The Student is hard of hearing and uses hearing aids and sign language. The Student's IEP includes the provision of a District sign language interpreter and the use of an FM listening system during the school day. An FM listening system allows a teacher to speak into a microphone that transmits the sound of the teacher's voice directly into the Student's hearing aid.

The Student participates in an after school program called H.E.A.R.T.S., which provides academic support and enrichment and development opportunities. The complaint alleged that the H.E.A.R.T.S. program did assign a sign language interpreter to the Student, but that the program failed to have a protocol in place to provide a substitute interpreter when the

regularly assigned interpreter was absent. The complainant informed OCR of several dates that the Student did not have access to an interpreter during the H.E.A.R.T.S. program. The Complainant also alleged that she observed the regularly assigned interpreter and believed that the individual was not a qualified interpreter because the interpreter signed outside the appropriate box within which the signing should occur, and that the interpreter was not fluent enough to sign the information communicated during the program.² Further, the complaint alleged that the H.E.A.R.T.S. staff did not appear to be trained in the Student's School Health Plan, which contained very specific provisions regarding the Student's well-being.

OCR discussed the allegations with the District representative. The District informed OCR that the school site and District had been working with the Complainant to ensure that the Student would be provided effective communication during the school day, and to ensure that school personnel were aware of implementing the Student's health plan. However, the District had not worked with the H.E.A.R.T.S. program on these areas because the program operates separately from the school day. After speaking to OCR on May 22, 2015, the District communicated with the H.E.A.R.T.S. program to put in place a protocol for when the assigned interpreter is not present. The protocol included identifying a qualified substitute interpreter, and if one was not available, a trained staff person would use the FM system to communicate with the Student. Additionally, the school nurse reviewed the Student's health plan with the H.E.A.R.T.S. program director.

OCR learned from the Complainant and the District that the Student will attend a different District elementary school in the 2015-2016 school year. At the time of OCR's communications with the District, the District did not know if the interpreter protocol or FM system would be set up for the Student during the school day or at this school's H.E.A.R.T.S. program.

The complaint also alleged that a District staff person contacted Child Protective Services about the Complainant's family in retaliation against the Complainant for raising concerns about the lack of equally effective communication with the Student during the school's investigation of an incident that led to damage to the Student's hearing aids. In response to this allegation, the District cited California state law which requires that any District employee must report any reasonable suspicion of abuse directly to Child Protective Services, and that the identity of the reporter would be kept confidential. OCR learned that the District provides every District employee with annual training on the mandatory reporter obligations under California state law.

Prior to the conclusion of the OCR investigation, and before OCR reached compliance determinations, the District expressed an interest in taking action to resolve the allegations in this complaint. Under Article III, Section 302 of OCR's Case Processing Manual, a complaint may be resolved before the conclusion of an investigation when the recipient expresses an interest in such a resolution and agrees to a resolution that is aligned with the complaint allegations and consistent with applicable regulations. On August 18, 2015, the District provided OCR with a

² The Complainant informed OCR that she is a certified sign language interpreter.

signed Resolution Agreement. As such, OCR is closing the investigative activity under this complaint number as of the date of this letter.

OCR concludes that the actions agreed to by the District in the enclosed Resolution Agreement will resolve the compliance issues raised in this case. OCR will monitor the implementation of the Resolution Agreement.

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 in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact Tammi Wong, Civil Rights Attorney, at 415-486-5564.

Sincerely,

/s/

James M. Wood
Team Leader

Encl.

cc: XXXXXXXX XX XXXXXXXX, Program Specialist, Special Education (by email only)