



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

June 18, 2015

Mr. Elliott Duchon
Superintendent
Jurupa Unified School District
4850 Pedley Road
Jurupa Valley, California 92509

(In reply, please refer to case no. 09-15-1239.)

Dear Superintendent Duchon:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its resolution of the above referenced complaint filed against the Jurupa Unified School District. OCR accepted for investigation the following issues:

1. Whether the District denies students enrolled in the Functional Skills Program (Program) at Patriot High School (School) a free, appropriate public education (FAPE) by failing to integrate them with nondisabled peers---for example, during vocational education activities---to the maximum extent appropriate to their needs.
2. Whether the District denies Program students: a) a FAPE by failing to consider whether their participation in nonacademic and extracurricular activities with nondisabled peers is a necessary part of their appropriate educational placement; or b) an equal opportunity to participate in nonacademic and extracurricular activities, even if participation is not a required element of their educational placement.

OCR initiated its 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 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.

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,

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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. §104.34(a), a student with a disability must be educated with non-disabled students to the maximum extent appropriate to the needs of the disabled student. School districts must place disabled students in the regular educational environment unless it can be demonstrated that education in the regular setting with the use of supplementary aids and services cannot be achieved satisfactorily. Under 34 C.F.R. §104.34(b), in providing or arranging for the provision of non-academic and extracurricular services and activities, a school district shall ensure that disabled students participate with nondisabled students to the maximum extent appropriate to the needs of the disabled student.

Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iii), school districts, in providing any aid, benefit or service, may not deny a qualified person with a disability an opportunity to participate, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others, or provide a qualified person with a disability with an aid, benefit or service that is not as effective as that provided to others.

The Section 504 regulations, at 34 C.F.R. §104.37(a)(1), require that school districts provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford disabled students an equal opportunity to participate. In addition, the Title II regulations, at 28 C.F.R. §35.130(b)(7), require public entities to make reasonable modifications to 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. Section 35.130(b)(7) applies to the nonacademic and extracurricular activities operated by school districts.

In some instances, IEP or Section 504 teams may determine that a student's participation in an extracurricular or nonacademic activity is required as a necessary component of the student's FAPE. If so, a school district must develop and deliver appropriate related aids and services through the IEP or Section 504 team process to enable the student to successfully participate in the activity. Where participation in an extracurricular or nonacademic activity is not required in order to provide a student with a FAPE, a school district nonetheless is obligated to provide the student with an equal opportunity to access such activities. A school district must make reasonable modifications to policies, practices, and procedures and provide aids, supports, and services that are necessary to ensure that the disabled student has an equal opportunity to participate, unless it can demonstrate that doing so would be a fundamental alteration to the program or would constitute an undue burden.

OCR began its investigation by reviewing documents provided by the Complainant and the District.

The Program at the School consists of two separate special education classrooms that follow the guidelines of the BASICS 2 curriculum and Core Standards. The curriculum includes five domains: Functional Academics, Domestic, Community, Vocational, and Recreation/Leisure. For the 2014-15 school year, 33 School students participated in the Program. Their disabilities included one or more of the following: orthopedic impairment; multiple disabilities; intellectual disability; speech or language impairment; specific learning disability; Autism; hearing impairment; visual impairment; and other health impairment.

The District reported to OCR that integration opportunities for Program students include: school rallies, dances, senior activities, and other School-wide events; a “Lunch Buddies” program; walking the track with a group of general education students; participating in general education classes; participating in some field trips with general education students; and participating in extracurricular programs and activities such as clubs and athletic teams.

The 2014-15 individualized education programs (IEPs) for all Program students generally provided for integration with nondisabled peers before and after school and during passing periods, at lunchtime, walking the track, and during assemblies, field trips, and other special activities. In addition, 11 Program students also participated in the Lunch Buddies program; two were integrated with an athletic team; three were integrated into a general education elective class; one participated in cheerleading; one participated in theater; and three participated in one or more School clubs. The IEPs reflected varying levels of discussion of integration opportunities.

The School hosts a traditional senior prom to which all School students are invited. During the 2014-15 school year, three Program students were scheduled to attend the traditional prom and one of these students ran for Prom King. The National Honor Society (NHS), a student organization, also sponsors an alternate prom at the School which originated as a service project targeted toward Program students but to which all School students are welcome. During the 2014-15 school year the majority of students in attendance were Program students, but some general education students also participated in the alternate prom.

Under Section 302 of OCR’s Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint. At the onset of OCR’s investigation, the District expressed an interest in resolving this complaint. The District thereafter entered into the enclosed Resolution Agreement. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District complied or failed to comply with Section 504 or Title II with respect to the issues raised by this complaint.

Through the Resolution Agreement, the District agreed to: offer to convene IEP meetings for Program students to specifically consider whether the student should participate in additional academic, nonacademic, and/or extracurricular programs or activities with nondisabled peers as a part of FAPE; notify parents or guardians of Program students of the process to follow if they want the student to participate in additional nonacademic or extracurricular programs or activities with nondisabled peers, even if such participation is not required as a part of FAPE; and take effective steps to ensure that Program students and their parents or guardians are notified of and encouraged to participate in the traditional prom. The District confirmed that it does not plan to hold any other NHS-sponsored proms. The District also agreed to take ongoing effective steps to notify Program students and their parents or guardians: of the full range of academic and nonacademic programs and activities available at the School; that Program students are encouraged to participate with their nondisabled peers in these programs and activities; and of the District’s obligation to provide aids, supports, modifications, or services to support Program students’ participation.

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 suit in federal court whether or not OCR finds a violation.

This concludes OCR's investigative process and 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. 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.

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 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: XXXXXXXX XXXXXXXX
Administrator, Education Support Services