



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

August 18, 2015

Dr. Kevin Riley
Executive Director
Bayfront Charter High School
830 Bay Boulevard
Chula Vista, CA 91911

(In reply, please refer to case no. 09-15-1243.)

Dear Director Riley:

In a letter dated April 1, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), notified you of a complaint filed against Bayfront Charter High School (School). The Complainant alleged discrimination against her son (Student) on the basis of race and disability. Specifically, the Complainant¹ alleged that the School failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's Individualized Education Program (IEP) and that the Student was subjected to harassment by another student who used a racial epithet and the School failed to respond appropriately and effectively to notice of the harassment.

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, Title VI of the Civil Rights Act of 1964 and the implementing regulations. Section 504 of the Rehabilitation Act of 1973 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. Title VI prohibits discrimination on the basis of race, color and national origin in programs and activities operated by recipients of Federal financial assistance. The School receives funds from the Department and is subject to Title VI and the regulation and the requirements of Section 504 and Title II.

Pursuant to section 302 of its *Case Processing Manual* (CPM), OCR has the ability to resolve a complaint if, prior to the conclusion of its investigation, the recipient expresses

¹ OCR notified the School of the Complainant's and Student's identity in its April 1, 2015 letter. Their names are withheld here in order to protect their privacy.

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

an interest in resolving the complaint and agrees to resolve the issues in the complaint under appropriate legal standards

On April 15, 2015, after OCR initiated its investigation of the present complaint, but prior to its request for data, legal counsel for the District, which oversees the School's charter, notified OCR that the School was interested in resolving the complaint pursuant to a section 302 agreement. On May 21, May 26, May 28, and June 3, 2015, OCR attempted to contact the Complainant to discuss the Section 302 agreement in order to determine if individual remedies may be necessary in this case. However, the Complainant did not respond.

After conducting these preliminary investigative steps, OCR determined it was appropriate to resolve the allegations and issues raised in this complaint via a Section 302 Agreement between OCR and the School. The School, without admitting any violation of the law, entered into the enclosed Agreement. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the School complied or failed to comply with Section 504, Title II, or Title VI.

Through initial discussions of the Resolution Agreement, the School agreed to convene an IEP meeting to discuss IEP implementation; however, the IEP team met on June 3, 2015 and the team determined that the Student would be placed on an inter-district transfer for the 2015-2016 school year. Based on this information, OCR determined that the issue of IEP implementation at the School was resolved. Under OCR CPM Section 110 (e), OCR will administratively close an allegation of discrimination when: "OCR obtains credible information indicating that the allegations raised by the complaint have been resolved, and there are no systemic allegations. In such a case, OCR will attempt to ascertain the apparent resolution. When OCR determines that there are no current allegations appropriate for further resolution, the complaint will be closed."

In the signed Resolution Agreement the School agreed to provide to its students and staff four distinct trainings related to issues of racial tolerance. OCR has determined that the actions taken by the School and its commitments expressed in the enclosed Agreement, when implemented, will resolve the issues in this complaint and is closing this matter as of the date of this letter. OCR will monitor the School's implementation of the enclosed Agreement through completion and may reopen the investigation if the School does not implement the provisions of the Agreement. OCR is informing the Complainant of the complaint resolution by concurrent letter. The Complainant may have the right to 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 School'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 School 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 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 personal privacy.

If you have any questions, please contact David Howard, Civil Rights Investigator, at (415) 486-5523.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Cc: Ms. Sarah L. Sutherland; Dannis, Woliver, and Kelley, LLC

Enclosure