



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

September 25, 2015

Michael R. McCormick
Superintendent
Val Verde Unified School District
975 W. Morgan Street
Perris, California 92571

(In reply, please refer to case no. 09-15-1323.)

Dear Superintendent McCormick:

On April 29, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Val Verde Unified School District (District). The Complainant alleged that the District discriminated against a student (Student) on the basis of disability.¹ Specifically, OCR opened for investigation whether the District failed to respond adequately to an internal complaint made on April 12, 2015 alleging that the Student had been harassed on the basis of her disability.²

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973, and its respective 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 as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds and is subject to the requirements of Section 504 and Title II.

OCR gathered evidence through interviews with the Complainant, and a review of documents and records submitted by the District and Complainant. Based on the evidence, OCR determined that the District was out of compliance with Section 504 and Title II with respect to an aspect of the allegation investigated in this complaint. The applicable legal standards, relevant facts, and basis for OCR's conclusions are summarized below.

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

¹ OCR informed the District of the Complainant's and Student's identities in our letter notifying it of the complaint. We are withholding them here to protect their privacy.

² OCR initially opened this complaint with an additional allegation that the District failed to provide the Student with a free and appropriate public education (FAPE) by failing to implement the Student's IEP. During the course of OCR's investigation, however, we determined that this FAPE allegation involves the same facts alleged in the failure to respond allegation.

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.

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.

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 promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, 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.

The following facts are relevant to OCR's conclusions:

Background:

- During the 2014-2015 school year, the Student was in transitional kindergarten at an elementary school (School) in the District. The Student is diagnosed with Autism Spectrum Disorder.
- According to the Complainant (the Student's mother), on April XX, 2015, the Complainant picked the Student up from school; later that day, the Complainant noticed bruises on the Student's arms. The Student indicated to the Complainant that the "duty guard" at school grabbed her arm. The Complainant told OCR that she believes the Student was referring to the "yard duty" staff or the staff that is responsible for assisting the Student with toileting. On the following day, the Complainant sent the District an email complaining about this.

- The District provided OCR with documents indicating that during the week of April XX, 2015, the District conducted an investigation into the Complainant's complaint. The District interviewed numerous staff members who were in contact with the Student during the previous week (including the health technician who sees the Student multiple times during the day for toileting), or who are frequently in contact with the Student. These documents indicated that the District ultimately determined there was no finding that any staff members or students grabbed or touched the Student in any way or manner that would cause marks, nor did the Student display any behaviors that concerned School staff.
- According to the District, on April XX, 2015, the Complainant told the District that she knew who hurt the Student, and was waiting for them to confess and accept the consequences.
- On April XX, 2015, the District's Director of Risk Management sent the Complainant a letter indicating that an investigation was performed, and that "the result of the investigation was that there are no findings to support the allegations cited in the complaint." The letter also indicated that "a staff member has stated that [the Complainant] knew who did this but were waiting for them to confess. If [the Complainant] indeed know[s] who this individual is, please provide the name of that individual to my office immediately so that we may continue the investigation."
- Following the receipt of this letter, the Complainant contacted the District in order to discuss her complaint and the investigation. The District directed the Complainant to contact the Director of Risk Management to schedule a time to meet and discuss her concerns. The Complainant later raised concerns about both the incident and the District not providing her with a thorough response at a District Board meeting.
- On April 29, 2015, the Complainant filed a complaint with the U.S. Department of Education, Office for Civil Rights against the District.

Policies and Procedures

- The District's Uniform Complaint Procedure (UCP) (including Board Policy 1312.3 and Administrative Regulation 1312.3) explains the process for filing a complaint of unlawful discrimination. These policies also state that the District will provide the complainant with a "final written decision" that includes, "the findings of fact based on the evidence gathered; the conclusion of law; disposition of the complaint; rationale for such disposition; corrective actions, if any are warranted; notice of the complainant's right to appeal the district's decision within 15 days to the CDE and procedures to be followed for initiating such an appeal; and for discrimination complaints, notice that the complaint must wait until 60 days have elapsed from the filing of an appeal with CDE before pursuing civil law remedies."
- These policies do not address, among other things, the responsibilities of employees who observe or receive a report or other notice of discrimination; the standard for investigation (adequate, reliable, and impartial); assurances that if discrimination is found, steps will be taken to stop the discrimination and to prevent recurrence; and a statement that retaliation is prohibited against complainants and those who participate in the investigative process.

The evidence collected by OCR indicates that a thorough investigation was in fact conducted by the District into the Complainant's complaint. However, when the District communicated the outcome of the investigation to the Complainant, it only stated that an investigation was

performed (without providing a summary of the factual information gathered), and that there were no “findings to support the allegations cited in the complaint” (without providing the reasons for its decision). The District also did not provide the Complainant with information about its appeal procedure in its response. Accordingly, the District failed to respond adequately to the Complainant’s complaint. OCR also noted that while the District’s UCP policies and procedures provide details about the investigative process (including the items that should be addressed in its final written decision to the complainant), these policies do not include multiple elements that should be included in its grievance procedure.

For the reasons stated, OCR determined the District failed to comply with Section 504, Title II, and their implementing regulations. To resolve the noncompliance, the District agreed to take the steps in the enclosed Resolution Agreement. OCR will monitor the District’s implementation of the agreement.

This concludes OCR’s investigation of the complaint 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. We are closing the complaint as the date of this letter, and notifying the complainant simultaneously. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and they 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 complainants may file another complaint 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Naghmeah Ordikhani, the attorney assigned to this case, at (415) 486-5588.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure