



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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

April 11, 2016

Dr. Steve Tietjen
Superintendent
Los Banos Unified School District
1717 S. 11th Street
Los Banos, California 93635

(In reply, please refer to case no. 09-15-1362.)

Dear Superintendent Tietjen:

On May 15, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Los Banos Unified School District (District). OCR investigated whether the District discriminated against the student on the basis of disability by excluding him from a school field trip.¹

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). Section 504 and its implementing regulation prohibit discrimination on the basis of disability by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is, therefore, subject to the requirements of Section 504, Title II, and their implementing regulations.

OCR gathered evidence by reviewing documents and other information provided by the complainant and the District. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issue investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

Legal Standard

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based

¹ OCR previously provided the District with the identity of the complainant. We are withholding her name from this letter to protect her privacy.

discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1), among other things, a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability,

- (i) deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service;
- (ii) afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others;
- (iv) provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others; and
- (v) limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

Facts Gathered to Date

- At the time the OCR complaint was filed in May 2015, the Student was XXX years old and in XXXXX grade. The Student was diagnosed with autism in February 2014 and has an Individualized Education Program (IEP). Though he is high functioning, the Student struggles with transitions and develops severe anxiety when introduced to new experiences. When his anxiety is triggered, the Student sometimes “melts down” or responds physically or violently.
- According to the complainant, a one-to-one aide was helpful in implementing positive behavior intervention programs for the Student.
- The incident that gave rise to this complaint occurred on April XX, 2015 when the Student's class took a field trip to the XXXXXX XXXXXX XXXXXX XXXX. The District told OCR that the Student's teacher reported that leading up to the field trip the Student expressed multiple times that he did not want to go. The teacher stated that the Student became aggressive whenever the field trip was mentioned, and began refusing to go to the teacher's classroom. The District stated that approximately one week before the field trip, the teacher sent home permission slips but did not send one home with the Student.

- The complainant stated that she received a permission slip that she signed and returned to the school. The complainant told OCR that the Student did not express anxiety or nervousness regarding the field trip when he was at home. In the weeks leading up to the field trip, no one from the school notified the complainant of the Student's unwillingness to go or aggravated state.
- On the day of the field trip, the Student's father contacted the school because he had a suspicion that the Student was not taken on the field trip. When he called and learned that the Student was intentionally left behind in study hall, he went to the school to remove the Student from school for the rest of the day.
- On May XX, 2015, the Student's father wrote to the school expressing his displeasure regarding the Student not attending the field trip. He also requested an IEP meeting.
- On June X, 2015, the District held an IEP meeting for the student. During this meeting, the District reports that the IEP team discussed field trips and assured the parents that they would be notified of any future field trips and that a permission slip would be sent home.
- The complainant stated that soon after the incident with the field trip, the Student's IEP team determined that he should be placed in a smaller school setting in a school that is outside of the District. The complainant stated that the Student is doing well in the new school setting. No field trip situations have arisen at the new school.

Analysis

The District has provided OCR with a narrative account of the events leading up to the field trip on April XX, 2015 and acknowledges that the Student did not attend the field trip due to the District's actions. However, the District asserted that the decision to not take the Student on the field trip was made out of concern for the Student's wellbeing, and not for a discriminatory reason. OCR has not yet conducted an interview with the student or with District staff members (including the teacher, principal, and members of the Student's IEP team). Such interviews would be necessary to determine whether the District discriminated against the Student on the basis of his disability in excluding him from the field trip. Accordingly, this matter remains unresolved.

Prior to concluding its investigation and to address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Agreement to Resolve (Agreement), which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

Summary of Resolution and Conclusion

Under the Agreement, the District will conduct an IEP team meeting in the event that the Student returns to a school within the District. The meeting is meant to ensure that appropriate accommodations are made for the Student to attend field trips, develop an action plan for transitioning the student to new environments, and develop an action plan for ensuring that the Student's guardians are made aware of issues inside the

classroom before any actions are taken that would constitute a change in the Student's placement, or would deny the Student access to a fieldtrip or extracurricular activity. The District will also provide written guidance and training to school site staff on their obligation to ensure that students are not discriminated against on the basis of disability and to implement modifications and accommodations for students with disabilities on field trips and in other non-classroom settings.

Based on the commitments made in the Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of Agreement until the District is in compliance with Section 504, Title II, and their respective implementing regulations, which were at issue in the case.

This concludes the investigation of this complaint. OCR's determination in this matter 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. 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 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 complainant 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 Abony Alexander, Civil Rights Attorney, at Abony.Alexander@ed.gov or Carolyn Wade, Equal Opportunity Specialist, at Carolyn.Wade@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure