



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

June 13, 2016

Mr. Jim Hanson
Interim Superintendent
Pleasanton Unified School District
4665 Bernal Avenue
Pleasanton, California 94566

(In reply, please refer to case no. 09-16-1070.)

Dear Superintendent Hanson:

This letter is to advise you of our findings in the above-referenced case which was opened on November 9, 2015, in response to a complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against the Pleasanton Unified School District (District), which alleged discrimination against the Student¹ on the basis of disability. Specifically, OCR investigated whether the District failed to implement the Student's Section 504 plan in her physical education (PE) class.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. Section 504 prohibits discrimination on the basis of disability 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, as amended, and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District, including the Student's Section 504 Plan, a narrative explanation of Section 504 implementation at the Student's middle school (School), and email communication among District and School staff regarding the Student related to her PE class. After careful review of the information gathered in the investigation, OCR concluded that the District did violate Section 504, Title II, and the regulations with regard to the issue OCR investigated. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

¹ OCR notified the District of the identity of the Complainant and the Student at the outset of the investigation. We are withholding their names from this letter 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.

Legal Standard

The regulations implementing Section 504 of the Rehabilitation Act of 1973, 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. 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.

Findings of Fact

In the 2015-16 school year, the Student was an XXXXXX grade student at the School in the District. The Student suffers from migraines and has asthma. The Student's Section 504 Plan specifies accommodations in PE class, including: “[d]ue to students [sic] asthmas [sic] he/she is not able to run the mile at any time.”

The School stated it has a policy of distributing a student's Section 504 Plan to the applicable student's teachers. However, its five PE teachers do not have Section 504 Plans for students who are not in their class, even though PE classes can be co-mingled and PE teachers will substitute for each other.

On October XX, 2015, the Student's PE teacher was absent and another PE teacher from the School taught the class. The substitute PE teacher asked the Student to run the mile in class. The Complainant stated that the Student suffered chest pains after running in PE class. The Complainant picked up the Student at School to take her to the emergency room.

The District acknowledged that the substitute PE teacher did not know the Student had a Section 504 Plan, or that she had an accommodation exempting her from running the mile due to her asthma. In this regard, the School stated that it has a procedure to inform substitute teachers of student accommodations. Each teacher has a “sub folder,” which contains the Individualized Education Program, Section 504, or Student Study Team accommodations that exist in his/her classroom. Substitute teachers receive this sub folder from the administrative secretary when they check in to the School. However, this procedure does not apply when there are informal substitutions among teachers at the School, since teachers do not check in with the administrative secretary before covering a colleague's class.

Since this incident, the District has informed OCR that the School has created a new procedure to ensure proper implementation of Section 504 Plans. Under this new procedure, all teachers are required to inform the principal's secretary if they substitute for each other, and the secretary will provide the substitute teacher all Section 504 Plans for students in the class. Furthermore, all PE teachers will receive all medical-related Section 504 Plans.

Analysis

OCR found that the staff at the School did not adequately understand and meet their responsibilities under Section 504 and Title II to provide FAPE to a qualified student with a disability. Specifically, the School failed to implement a PE accommodation described in the Student's Section 504 Plan. Although the Student's Section 504 Plan exempted her from running the mile in PE due to asthma, the substitute PE teacher was not aware of the Student's disabilities or the requirements of her Section 504 Plan and required the Student to run the mile. The Complainant stated that this resulted in the Student suffering chest pains; the Complainant took the Student to the emergency room for medical attention. Therefore, OCR concludes that the District did not comply with the requirements of Section 504 and Title II and their applicable regulations.

Conclusion

To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegation and the findings and information obtained by OCR during its investigation. Under the resolution agreement, the District will revise, disseminate, and provide training on its policy to ensure all substitute teachers and PE teachers at the School receive Section 504 Plans. The resolution agreement also requires reimbursement to the Complainant and that the District convene a Section 504 meeting to address accommodations and implementation at the Student's new school site for the upcoming school year.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant and District concurrently. When fully implemented, the resolution 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 implementing regulations, which were at issue in the case.

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 Annie Lee at annie.lee@ed.gov or (415) 486-5594.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure