



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

February 16, 2017

Timothy Ritter
Superintendent
Temecula Valley Unified School District
31350 Rancho Vista Road
Temecula, California 92592

(In reply, please refer to case no. 09-16-1519)

Dear Superintendent Ritter:

On June 15, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Temecula Valley Unified School District (District). The Complainant, on behalf of the Student, alleged discrimination on the basis of disability.¹ Specifically, OCR investigated whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to evaluate the Student in a timely manner even though it had reason to believe that the Student needed accommodations and the ability to make-up incomplete work due to her disability.

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.

OCR gathered evidence by interviewing the Complainant and Student and reviewing documents and other information provided by the Complainant, the Student, 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.

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

Legal Standard

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. 34 C.F.R. §104.33(b)(2). 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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner.² Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

In the context of providing a FAPE under Section 504, the regulations, at 34 C.F.R. §104.3(j), define an individual with a disability as any person who has a physical or mental impairment which substantially limits a major life activity. Under 34 C.F.R. §104.3(j)(2)(ii), major life activities include learning. The definition of disability under the Title II regulations, at 28 C.F.R. §35.104, is substantially the same. It is important to note that a student may have a physical or mental disorder that qualifies the student as a disabled individual requiring services under Section 504 and Title II even though the disorder does not meet the eligibility criteria for services under the IDEA. The IDEA applies only to students who have specifically identified conditions. Section 504 and Title II apply to any student who has a physical or mental impairment that substantially limits a major life activity.

² For further explanation, please see the Dear Colleague Letter entitled "English Learner Students and Limited English Parents" (jointly issued by OCR & the U.S. Department of Justice) (January 17, 2015).

Facts Gathered to Date

- The Student and Complainant have been homeless for approximately 2 years.³ The Student was a senior in a District high school (School), at the time of the events relevant to this complaint.
- The Student began attending the School during her freshman year. As a freshman, the Student received high marks in all of her classes and was identified as a “Gifted and Talented Education” (GATE) student. She began taking advanced courses in her second year. In her junior and senior year, the Student maintained at or above a 3.0 GPA.
- In November 2015 during the Student’s senior year, the Student became very ill and began experiencing nausea, vomiting, hemorrhaging, cramping, and diarrhea. As a result, the Student spent time in and out of the hospital, and missed multiple full and partial days of school. According to the District’s narrative response, during her second semester (between January 5, 2016 and June 2, 2016), the Student was absent 59 days.
- The Complainant and the Student told OCR that they were in contact with the Student’s homelessness advocate counselor (Counselor) regarding her on-going health issues and the Complainant and Student made several attempts to obtain accommodations from the Counselor for the Student because of her illness. OCR has not yet interviewed the Counselor regarding her response to these concerns.
- Starting in January of 2016, the Student was enrolled in a one-semester XXXXXXXXXXXX class that took place during her first period of the day. The Complainant told OCR that the Student’s symptoms tended to be most severe in the morning, and as a result the Student often missed the first period of the day. The Complainant stated that she and the Student attempted to explain to the XXXXXXXXXXXX teacher (Teacher) that the Student’s absences were due to her illness, but he refused to allow the Student to make up work.
- In March of 2016, the Student was diagnosed with a hormone imbalance. Although the Student had obtained a diagnosis, the medication her doctor prescribed at that time did not alleviate the Student’s symptoms.
- The Complainant told OCR that in April 2016, she and the Student went to the School’s Principal (Principal) to explain the Student’s diagnosis. According to the Complainant, the Principal directed her to the Counselor to work out her concerns. He also advised the Complainant to email the teacher. OCR has not interviewed the Principal to ascertain whether he took any other action with respect to the Complainant’s concerns.
- On April XX, 2016, the Complainant emailed the Teacher to provide documentation of the Student’s health issues and to ensure that the Student could make up her missing work. The Teacher responded that the Student was failing the class. The Complainant requested a

³ OCR has not yet confirmed the duration of the Student’s homelessness, or the Student’s current housing status.

parent-teacher conference on May X, 2016, to discuss how the Student might be able to make up the work that she missed. In the documentation provided to OCR, there is no evidence that the Teacher responded to this request.

- On April XX, 2016, the Complainant also emailed the Director of Curriculum, Instruction & Assessment (Director) to discuss the Student's health and academic concerns. She did not receive a response to her email until June X, 2016 (as discussed below). By then, the Student had already received a failing grade from the Teacher.
- During the week of May XXXX, the Student again attempted to obtain makeup work from the Teacher during his lunch period. According to the District, the Teacher was not expecting the Student at that time and could not provide her any makeup work.
- On May XX, 2016, the Student attended class and attempted to turn in the work that had previously been assigned to her. According to the Complainant, the Teacher refused to accept this work because the Student had not been present in class. Instead, the Teacher gave the Student a list of nine assignments and directed her to complete them by May XX, 2016 in order to receive credit for the course. The Teacher also told the Student that she would have to pass his final examination on May XXXX 2016. The Teacher also stated that he would allow students who missed the exam on May XXXX to take a makeup exam on May XXXX.
- Between May XX, 2016 and May XX, 2016, the Student was absent for several days due to illness and was in urgent care on May XX, 2016. The documentation provided by the District does not specify which periods during the day the Student missed and which of those days were excused or unexcused. The Complainant provided OCR with a note from the Student's doctor stating that she should not return to school until May XX, 2016, a day after her urgent care visit.
- According to the Student, on May XX, 2016, the Student attended class and attempted to turn in her work. The Teacher refused to accept the work.
- On June X, 2016, the Director responded to the Complainant's April XX, 2016 email. He stated that he did not have the authority to change the Student's grade and that the Teacher was standing by the failing grade. The Director told the Complainant that the Student "will not be part of the graduation ceremony this evening. In order to receive her diploma, she will need to successfully complete the [Course]." The Director recommended that the Student enroll in summer school to receive credit for the course and obtain her diploma.
- Despite receiving an "F" in the XXXXXXXXXXXX class, the Student had a 3.4 GPA for the year.
- On June X, 2016, the Complainant filed a formal complaint against the Teacher and submitted a request for a grade change to the Principal and Director. The complaint alleged that because the Teacher refused to accept the Student's make up work, he violated the

McKinney-Vento Homeless Assistance Act and the California Education Code that requires that students with excused absences be allowed to make up missed work. The Principal conducted an investigation in response to the formal complaint and the grade change request.⁴

- On June XX, 2016, the Principal issued a report and findings in response to the complaint and grade change request. The Principal found no grounds to change the assigned grades because his investigation “did not discover mistake, fraud, or incompetency.” Instead, the Principal found that the Student failed the class “due to excessive absences resulting in missed assignments, poor work completion, and missed assignments [sic].”
- The Student enrolled in summer school as suggested by the Director. While in summer school, the Student told OCR that there were other students in her class who had been allowed to walk in the graduation ceremony but who had apparently failed the XXXXXXXXXX class. OCR has not requested additional data from the District regarding whether other students who failed the XXXXXXXXXX class were allowed to walk in the graduation ceremony.
- The Student completed all of her summer school work and was issued a diploma on July X, 2016. Despite receiving the “F” in XXXXXXXXXX, the Student graduated from the School with honors.
- The Complainant told OCR that because of the failing grade and her inability to be issued a timely diploma, the Student missed out on scholarship and post-secondary opportunities. The Complainant also told OCR that this experience had been extremely difficult emotionally for the Student because she was told that she failed a class despite all of the hard work she put into her studies. The Complainant told OCR that because the Student and Complainant are homeless, the Student would stay up late at working at local restaurants and coffee shops to finish her homework. The Student explained that she stopped pursuing college and scholarship applications as a result of the events that took place during her senior year. She stated that although a few colleges had attempted to work with her by providing extensions, she was unable to follow through with the process because she did not believe any university would ultimately accept a student who failed a basic XXXXXXXXXX class.

Analysis

Under Section 302 of OCR’s Complaint Processing Manual (CPM), OCR complaints may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses

⁴ OCR notes that the complaint filed by the Complainant with the District did not explicitly discuss discrimination on the basis of disability but focused on the federal law that protects students who are homeless. As such, OCR’s investigation did not include an allegation concerning whether the District failed to investigate discrimination under Section 504 and Title II. However, OCR notes its concern that the Complainant may not have been informed of her rights to file a discrimination complaint under Section 504 and Title II.

an interest and OCR determines that it is appropriate to resolve the complaint with an agreement reached during the course of the investigation.

Prior to the conclusion of this investigation, the District indicated an interest in resolving this matter under Section 302 of the CPM. OCR determined that this complaint was appropriate for resolution under Section 302 because the facts gathered by OCR thus far raised compliance concerns, but OCR needed additional evidence to conclude the investigation and reach a finding. Specifically, OCR was concerned that the District failed to evaluate the Student even though it had notice of the Student's health issues and that those issues were preventing her from attending class. However, to complete the investigation, OCR would need to (1) obtain further documentation regarding the Student's medical condition and what documentation or other information regarding that condition was provided to School staff, and (2) conduct an interview of the Student's Teacher, Principal, and Counselor to clarify the date upon which the District had notice of the Student's suspected disability and measures taken to evaluate the Student and provide accommodations, if any. With respect to the extent of harm that resulted from any discrimination, OCR would also obtain further information about college and scholarship applications, and evidence regarding whether other students who had failed the government class were allowed to walk in the graduation ceremony. Accordingly, this matter remains unresolved.

Prior to the conclusion of OCR's investigation, the District, without admitting to any violation of law, entered into the enclosed Agreement to Resolve (Agreement). The Agreement is aligned with the complaint allegations and the information obtained by OCR during its investigation, and it addresses the concerns identified by OCR during the investigation to date.

Summary of Resolution and Conclusion

Under the Agreement, the District will make a fund available to the Student to address academic deficits and mental health issues that may have occurred as a result of the alleged failure to evaluate the Student. The District will also assign a college counselor to help the Student with college and scholarship applications. The Student will be permitted to visit District facilities (i.e., the School) and utilize its computer/internet equipment to complete applications and perform other related tasks. Finally, the District will issue written guidance and conduct training on the Section 504 evaluation process and requirements and the definition of disability under Section 504 and Title II. The written guidance and training will be provided to all faculty and administrators at the School.

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 and Student 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.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosures

cc: Sarah L.W. Sutherland, Counsel for the District (by e-mail only)