



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

November 17, 2016

Dr. Janet Young  
Superintendent  
Clovis Unified School District  
1450 Herndon Avenue  
Clovis, California 93611

(In reply, please refer to case no. 09-16-1527.)

Dear Superintendent Young:

On June 21, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Clovis Unified School District (Recipient). The Complainant alleges that the Student was subjected to harassment by a Recipient employee on the basis of his disability, and that the Recipient failed to respond appropriately and effectively to notice of the harassment.<sup>1</sup>

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The Recipient receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a Recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the Recipient informed OCR it was amenable to resolving the complaint in this manner. OCR and the Recipient entered into the attached agreement to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 and Title II.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

### *Legal Standards*

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

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<sup>1</sup> OCR previously provided the Recipient with the identities of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

benefits, services, or opportunities. School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee, the district is responsible for determining what occurred and responding appropriately. 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.

OCR's preliminary investigation showed the following:

In July and August of 2016, the Complainant indicated to OCR that the Student was harassed by his teacher (Teacher) from October 2015 to January 2016. This harassment included the following: the Teacher grabbing him by the hair and pulling him out of his seat during a test, and accusing him of cheating in front of the class; discussing his disability (Attention Deficient Hyperactivity Disorder (ADHD)) with other individuals; making him skip recess and sit in a room to punish him for his ADHD; and moving his desk to the back of the classroom and having him face the wall as punishment for his disability. The Student was in second grade at the time of this incident - the Complainant told OCR that the Teacher was aware of the Student's disability during this time, but was still harassing him because of his ADHD. The Student did not have a Section 504 plan in place at that time.

The Complainant also stated to OCR that after the Complainant raised her concerns to the Recipient, the Student was moved to another classroom in January 2016; he was also assessed, which resulted in a Section 504 plan being put in place in March 2016. The Complainant told OCR, though, that the Recipient never addressed or investigated her complaint against the Teacher, and she never received anything in writing from the Recipient in response to her complaint. The Complainant also said that she discussed her complaint with the School's Principal and Vice Principal on a number of occasions, and was told that they could not legally inform her of whether the Recipient punished the Teacher as a result of her complaint.

The Complainant further indicated to OCR that the Teacher's harassment of the Student continued after he was moved out of her class: the students in his former class asked where the Student went, and the Teacher said that he was "bad," and that "bad kids get moved out of class."

In August 2016, OCR reached out to the Recipient regarding these allegations, and the Recipient stated that it responded effectively and adequately to Complainant's complaint. However, the Recipient indicated its interest in voluntary resolution in August 2016.

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a Recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the Recipient entered into the attached agreement to resolve the complaint. The agreement requires the Recipient to, in sum: conduct an investigation into the Complainant's allegation that the Student was subjected to disability-based harassment by the Teacher and provide the Complainant with a written response; convene a Section 504 team meeting to determine if revisions to the Student's Section 504 plan are necessary and if the Student needs compensatory and/or remedial services to address the alleged harassment the Student experienced; provide training to Recipient and school administrators regarding its responsibility for investigating and responding to allegations of disability-based discrimination; and provide Recipient and School administrators, faculty, and staff training and a written guidance memorandum regarding the Recipient's harassment policies and procedures.

Because the Recipient voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the Recipient failed to comply with Section 504 and Title II. OCR will monitor the Recipient's implementation of the agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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 privacy.

If you have any questions, please contact Naghmeh Ordikhani, Civil Rights Attorney, at 415-486-5588.

Sincerely,

/s/

Kendra Fox-Davis  
Team Leader