



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

June 23, 2017

Chris D. Funk
Superintendent
East Side Union High School District
830 North Capitol Avenue
San Jose, California 95133

(In reply, please refer to case no. 09-16-1977.)

Dear Superintendent Funk:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the East Side Union High School District (ESUHSD). The Complainant alleged that the ESUHSD discriminated against the Student on the basis of disability.¹ Specifically, OCR investigated whether the ESUHSD discriminated against the Student on the basis of her disability by failing to determine and provide the accommodations and services she needed in order to participate equally in the Silicon Valley Career Technical Education Program academic competition sponsored by another school district (District 1).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, ESUHSD is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR interviewed the Complainant and reviewed documents and other information provided by the Complainant and ESUHSD. The applicable legal standard and the facts gathered by OCR to date are summarized below.

¹ OCR previously provided ESUHSD with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

Issue: Whether the ESUHSD discriminated against the Student on the basis of her disability by failing to determine and provide the accommodations and services she needed in order to participate equally in the District 1-sponsored Silicon Valley Career Technical Education Program academic competition.

Legal Standards

Under both the Section 504 regulations, at 34 C.F.R. § 104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. § 35.130(b)(1)(i), (ii) and (iii), school districts, in providing any aid, benefit or service, may not deny a qualified person with a disability an opportunity to participate, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others, or provide a qualified person with a disability with an aid, benefit or service that is not as effective as that provided to others.

In addition, the Title II regulations, at 28 C.F.R. § 35.130(b)(7), require public entities to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Whether or not a particular modification or service would fundamentally alter the program is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to a disabled individual would result in additional cost does not of itself constitute an undue burden on the program.

Findings of Fact

- The Student attends a high school (School), which is part of ESUHSD and was in the XXXX grade during the 2015-2016 school year.² ESUHSD is also a member of District 1. District 1 is comprised of six school districts.
- At the beginning of the 2015-2016 school year, the Student was enrolled in a vocational program through the District 1 Silicon Valley Career Technical Education Program (SVCTE Program), which is a School elective course. The Student attended the SVCTE Program at a campus located away from the School campus.
- The Student's first Section 504 plan process with the School took place on March X, 2016 and the Section 504 plan is dated March X, 2016. The School conducted the March X, 2016 Section 504 plan meeting upon the Complainant's request after the Student was hospitalized and diagnosed for depression. The Complainant is the Student's parent. The Student's Section 504 plan was signed by those who took part in the March X, 2016 Section 504 plan meeting: the School Vice Principal, the School Section 504 Coordinator, the Complainant, and the Student. A District 1 or

² The complainant also filed a complaint against District 1 which has also been investigated by OCR under OCR docket number 09-16-1338.

SVCTE administrator knowledgeable about the Student's SVCTE Program work did not take part in the meeting. The Section 504 plan includes accommodations for the Student as follows: coping skills; priority seating "in front of class and/or near positive class mates"; and additional time on large projects and exams.

- On March XX, 2016, the School provided the Student's Section 504 plan by e-mail to the Student's SVCTE Program teacher and the ESUHSD-SVCTE Program Counselor.
- In April 2016, the Student took part in a District 1-sponsored SVCTE Program academic competition (Competition) which took place over 600 miles away. Prior to the Competition, the Complainant requested that the SVCTE Program Principal provide the Student with an accommodation for this District 1-sponsored SVCTE Program event. Specifically, the Complainant requested that the Student not be roomed with non-team members while rooming in the hotel for the Competition. The Complainant provided doctors' letters indicating that rooming with non-team members would aggravate the Student's disability. Both ESUHSD and District 1 did not at the time of Complainant's request and currently do not have a written policy which provides how the two recipients should coordinate and respond to an event accommodation requests. In a March XX, 2016 e-mail, the Complainant stated to the School Section 504 Coordinator and the ESUHSD-SVCTE Program Counselor that the SVCTE Program Principal responded negatively to the accommodation request by indicating that the Student should not attend the District 1-sponsored SVCTE Program Competition if the Student feels anxious without her team members.
- Thereafter, in a March XX, 2016 e-mail, the ESUHSD-SVCTE Program Counselor responded to the Complainant's accommodation request. The Program Counselor stated that a partial accommodation was determined during a meeting between the ESUHSD-SVCTE Program Counselor and two other SVCTE counselors, per the direction of the SVCTE Program Principal. Specifically, the ESUHSD-SVCTE Program Counselor stated "due to logistics" one of the Student's roommates would be a non-team member and the other two would be team members. The SVCTE Program Principal did not invite the Complainant or the School Section 504 Coordinator to this meeting.
- The Complainant brought a complaint to the SVCTE Program alleging among other things that the SVCTE Program failed to provide the Student the requested accommodation. District 1 conducted an investigation and offered a resolution to a separate issue raised by the Complainant involving the awarding of a medal. However, District 1 did not address the Complainant's allegation regarding the failure to provide the requested accommodation other than to state that "it had complied with the applicable laws related to students with disabilities."

Analysis & Conclusions of Law

OCR is concerned that ESUHSD and District 1 staff and administrators may not have followed appropriate procedures when addressing the request for accommodations from the Student for the extracurricular event. Here, OCR found that ESUHSD and District 1 do not have a written policy or procedure in place for responding to requests for accommodations for students with disabilities from the districts participating in their programs and activities, including off-campus events. OCR is concerned that ESUHSD and District 1 may not have a system in place to ensure that staff at both sites are aware of the needs of ESUHSD students with disabilities and how to provide the students with disabilities with the accommodations they need to participate equally in District 1-sponsored events.

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 school district expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, ESUHSD expressed an interest in resolving this complaint, and OCR agreed it was appropriate to do so. ESUHSD thereafter entered into the enclosed Resolution Agreement. Accordingly, OCR did not complete its investigation or reach conclusions as to whether ESUHSD complied or failed to comply with Section 504 or Title II with respect to the allegations raised by this complaint.

Through the Resolution Agreement, ESUHSD agreed to the following: (i) ESUHSD will develop procedures to provide students with disabilities with the accommodations they need to participate in District 1-sponsored SVCTE Program events, which take place outside of the SVCTE Program classroom or internship site; (ii) ESUHSD will draft a guidance memorandum describing the procedures; (iii) ESUHSD shall adopt, publish and distribute the procedures; and (iv) ESUHSD shall provide training to ESUHSD administrators responsible for monitoring implementation of students' Individual Education Programs or Section 504 plans.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor ESUHSD's implementation of the Resolution Agreement through completion. The Complainant is being notified by concurrent letter. The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

This concludes OCR's investigative process and should not be interpreted to address the ESUHSD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 ESUHSD 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 individual may file a complaint with OCR 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 we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR appreciates the courtesy and cooperation extended by you and your staff during the complaint resolution process. If you have any questions, please contact civil rights attorney Genevieve Gallegos at (415) 486-5593.

Sincerely,

/s/

Kana Yang
Acting Team Leader

Enclosure

cc: Kenya Edison
Director II of Student Services
(e-mail only)