



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

April 10, 2017

Pam Magee, Ed.D.
Executive Director/Principal
Palisades Charter High School
15777 Bowdoin Street
Pacific Palisades, CA 90272

(In reply, please refer to case no. 09-17-1001)

Dear Dr. Magee:

The U.S. Department of Education (Department), San Francisco Office for Civil Rights (OCR), has resolved the above-referenced complaint filed against the Palisades Charter High School (School). The complainant¹ alleged that she was discriminated against because of disability. Specifically, she alleged that the School: (1) failed to provide her with a free appropriate public education (FAPE) by failing to implement her Section 504 plan in her chemistry class during the 2015-16 school year; and (2) subjected her to harassment by an employee based on disability and failed to respond appropriately and effectively to notice of the harassment.

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), as amended. Section 504 and its implementing regulations prohibit discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance from the Department (recipients). Title II and its implementing regulations prohibit discrimination on the basis of disability by public entities. The School receives Department funds, is a public educational system, and is, therefore, subject to the provisions of Section 504, Title II, and their respective implementing regulations.

Prior to OCR concluding its investigation, the School expressed its interest in addressing the issues identified in the investigation by entering into a Resolution Agreement (Agreement) with OCR. OCR has determined that such an agreement is appropriate and that the actions the School has committed to take in the Agreement will effectively resolve the issues identified in this complaint. A copy of the Agreement is enclosed.

The applicable legal standards, information obtained by OCR prior to the School's entering into the Agreement, and OCR's analysis of the information pursuant to the applicable legal standards is stated below.

¹ OCR provided the name of the complainant in its notification letter to the School and is not stating it in this letter in the interest of privacy.

I. LEGAL STANDARDS

The Section 504 regulations require recipients to provide a 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 34 C.F.R. §§ 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 public schools to provide a FAPE at least to the same extent required under the Section 504 regulations.

The regulations implementing Section 504, at 34 C.F.R. §§ 104.4(a) and (b), prohibit discrimination based on disability by recipients. The Title II regulations, at 28 C.F.R. §§ 35.130(a) and (b), create the same prohibition against disability-based discrimination by public schools. Schools 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 benefits, services, or opportunities.

Public schools 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 public school 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 public school 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 circumstances. However, in all cases the response must be tailored to stop the harassment, eliminate the hostile environment if one has been created, and address the problems experienced by the student who was harassed. The public school must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

II. FACTS ASSERTED BY COMPLAINANT

The complainant received accommodations through a Section 504 plan that was dated November XX, 2015. The accommodations noted in the plan were: extended time on tests and essays up to 50%; testing in a smaller setting; extended time on reading assignments up to 50%; extra time on homework up to two extra class days without penalty; recording of lectures and class discussions; class notes when possible; preferential seating near the source of instruction; and, eligibility for a study period preferably toward the end of the day.

The complainant asserted that her chemistry teacher refused to comply with the provisions of the Section 504 plan when she refused to accept two homework assignments that the complainant submitted on June X which were originally due on June X, 2016 (Nuclear Chem Pkt) and on June X, 2016 (Performance Task Project). According to the complainant, even after the School's Director of Student Services intervened, the teacher continued to refuse to accept them and recorded grades of zero for each in her grade book. This resulted in the complainant receiving a grade of "C" in the class.

On an unspecified date in May 2016, the complainant alleged that she requested of her chemistry teacher that she be permitted to take the Chapter 17 quiz in her resource classroom and that the teacher refused. According to the complainant, as a result, she felt stressed and this caused her to plug numbers into the equation incorrectly which resulted in the wrong answer. According to the complainant, her math in reaching the answer, was correct but she received a grade of zero for the quiz, while other students received partial credit in their grades when they made the same mistake of plugging the wrong numbers into the equation but still performing the math correctly.

On April X, 2016, the complainant was late to school for reasons related to her disability. When she arrived at the School, the complainant alleges that she checked in at the attendance office and then went to the resource room to drop off her track bag. According to the complainant, the School's Director of Student Activities, Athletics, Discipline and Security (Dean 1) walked into the resource room and informed the complainant that the chemistry teacher reported that the complainant had cut her class. According to the complainant, she then explained what had happened and Dean 1 responded that it was okay and he would inform the chemistry teacher. However, as she was studying, another dean came into the resource room and informed her that she was receiving four detentions from the chemistry teacher for cutting class. On the same day as above, during the next class period, the complainant asked the chemistry teacher for the packet that was worked on during the previous period and the chemistry teacher accused her of cutting class in front of other students.

The complainant asserted that there have been other isolated incidents with the chemistry teacher including the teacher being angry at the complainant for the resource teacher's error in not bringing a test/quiz of the complainants back to the chemistry teacher, and another incident in which the chemistry teacher remarked that the complainant's actions of taking a test in the resource room constituted cheating.

III. RESOLUTION

To meet Section 504's requirement of providing a FAPE to students with disabilities, schools generally create a Section 504 plan that will detail the accommodations and services that the student must be provided to receive a FAPE. In order for the Section 504 plan to be effective, teachers and others involved with the student's education must adhere to its provisions including the implementation of accommodations in their classrooms. A teacher's failure or refusal to implement a provision of a student's Section 504 plan can detrimentally impact the student's ability to receive a FAPE and can also

result in the inequitable treatment of the student compared to his peers who do not have a disability since the provisions of the Section 504 plan serve as the foundation for giving the student with a disability an opportunity that is equal to nondisabled students.

In this matter, the complainant's Section 504 plan required several accommodations to be provided to her in the classroom and the complainant alleged that one of her teachers refused to fully implement the accommodations which negatively affected her performance and the grade that she received in the teacher's class. The complainant also asserted that the teacher harassed her because of her disability by refusing to follow the terms of her Section 504 plan and by making several derogatory or disrespectful statements or comments related to her disability or her use of a Section 504 plan.

The complainant's allegations, if true, would raise concerns about the teacher's actions adversely impacting the complainant's ability to receive a FAPE in the teacher's classroom and would demonstrate deficiencies in the School's compliance with Section 504. When OCR informed the School of the complainant's allegations, the School expressed its desire to resolve this matter through the Resolution Agreement prior to OCR concluding its investigation as provided for in section 207 and section 302 of OCR's Case Processing Manual (CPM). Because OCR believes the Resolution Agreement signed by the School will address the issues and potential deficiencies raised by the complaint in this matter, it did not complete its investigation and does not make any determination about the complaint allegations.

IV. CONCLUSION

The School, prior to OCR concluding its review, committed to addressing the issues identified by OCR through the Resolution Agreement. Pursuant to the terms of the Resolution Agreement, the School will take the following actions to address the issues:

- create a memorandum for its administration, faculty, and staff that reaffirms its obligations to comply with the requirements of Section 504 and Title II and of their responsibilities in ensuring the School's compliance;
- provide training on the subject matter of the created memorandum;
- monitor the chemistry teacher's compliance with and implementation of the provisions of the Section 504 plans and IEPs of the students in her classroom; and,
- investigate the complainant's experience in the teacher's classroom to determine if any discriminatory acts occurred and, if they did, to take whatever remedial or corrective action is necessary in response.

This concludes OCR's investigation in this matter. It should not be interpreted to address the School'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 School may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the compliance review process. If this happens, the individual may file a 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 personal privacy.

When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns in this matter. OCR will monitor the implementation of its terms until the School is in compliance with Section 504, Title II, and their implementing regulations that were at issue in this matter.

Thank you and your staff, specifically Mary Bush, Director of Student Support Services, for your cooperation and assistance in resolving this matter. If you have any questions regarding this letter, please contact Alan Konig, Civil Rights Attorney, at (415) 486-5527 or Alan.Konig@ed.gov.

Sincerely,

/s/

Anamaria Loya
Chief Regional Attorney

encl.

cc: Mary Bush, Director of Student Support Services