



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 3, 2017

Ms. Kirsten M. Vital
Superintendent
Capistrano Unified School District
33122 Valle Road
San Juan Capistrano, California 92675

(In reply, please refer to case no. 09-17-1016.)

Dear Superintendent Vital:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Capistrano Unified School District (District). The complaint alleged that the District discriminated against a class of students on the basis of disability. Specifically, OCR began an investigation of the following allegation:

1. Whether sixth grade students enrolled in Special Education at Fred Newhart Middle School (School) were denied the equal opportunity to participate in a year end party held for the sixth grade class.

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 14. Section 504 prohibits discrimination on the basis of disability 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, the District is subject to Section 504, Title II, and their implementing regulations.

OCR reviewed documents and other information provided by the Complainant and the District and interviewed the Complainant. Prior to OCR completing its investigation, the District expressed an interest in voluntarily resolving the allegations pursuant to section 302 of OCR'S Case Processing Manual,¹ and OCR determined it was appropriate to do so. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution agreement (Agreement) reached with the District.

¹ OCR's Case Processing Manual may be found at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>

Legal Standards

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. 34 C.F.R. §104.37 provides that a school district must provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation. These services and activities may include counseling, physical recreational athletics, transportation, special interest groups or clubs, and other recreational activities. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service.

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.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the district's actions were based on the individual's disability.

Factual Background

The Complainant alleges that sixth grade special education students were denied an equal opportunity to participate in a year end party for all sixth grade students. According to the Complainant, students with autism and other disabilities enrolled in the Structured Teaching Educating Prepared Students (STEPS) never received permission slips to attend this party, and parents of STEPS students only became aware of it a few hours before it was scheduled to start. The District acknowledged that the long term substitute overseeing roughly half of the school's STEPS students may not have sent

permission slips home with students. However, it stated that it also sent notice of the party to parents on an opt-in listserv.

The Complainant stated that the School refused to provide the appropriate educational supports for STEPS students when it declined to provide aids for STEPS students to participate in the party. On the morning of the event, two STEPS parents met with the principal to discuss if STEPS students could attend and what educational supports would be put in place. The parents requested that STEPS students be assigned a 1:1 aide during the party to address safety concerns. The School stated that the teachers and other school staff that would be chaperoning would be sufficient to ensure the safety of any STEPS students in attendance. With the issue remaining unresolved, the two parents decided that their children would not be attending the party. The District could not confirm if any STEPS students attended the party.

Analysis

Based on the preliminary information provided in the complaint and the data responses received from the District, OCR identified a deficiency because the District may have failed to take appropriate steps to ensure that sixth grade students in the STEPS program were provided with an equal opportunity to be able to participate in a school-wide sixth grade party with their non-disabled peers. 34 C.F.R. §104.37; 28 C.F.R. §35.130(b)(7).

Prior to concluding its investigation and to address the allegation in this complaint, the District entered into the enclosed resolution agreement which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

Under the agreement, the District will, among other things, develop a communications system for the parents of students in the STEPS classes for notices to be sent home via a universal service and revise its policy to ensure STEPS students may attend school-wide social functions and events in accordance with 34 C.F.R. §104.37 and §35.130. The District will train staff at the School on the use of the communications system and School policy. The District will provide parents of students in STEPS classes with copies of important documents, such as permission slips and handouts with as much advance time as needed to arrange modifications that will allow special needs students to participate in the events to the maximum extent appropriate to the needs of the individual students.

Conclusion

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance issues in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Section 504 and Title II, 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 David LaDue, Civil Rights Attorney, at (415) 486-5528, or Barry Jointer, Investigator, at (415) 486-5543.

Sincerely,

/s/

James M. Wood
Team Leader

Cc: XXXX XXXXX,
Executive Director - Informal Dispute Resolution/Compliance