



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

July 17, 2017

Laura Merrick
Chief Business Officer
Cottonwood Unified School District
20512 West First Street
Cottonwood, California 96022-8808

Re: OCR No. 09-17-1218
Cottonwood Unified School District

Dear Ms. Merrick:

This is to advise you of the resolution of the above-referenced complaint investigation of the Cottonwood Unified School District (District) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on February 6, 2017, alleged that the District is failing to provide the Student¹ with a free appropriate education (FAPE), on the basis of disability by failing to implement the Student's 504 plan.

OCR is responsible for enforcing section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 United States Code (U.S.C.) § 794, *et seq.*, and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject to OCR's jurisdiction under Section 504 and Title II.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

Legal Authority:

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,

¹ OCR notified the District of the complainant's and Student's names when the investigation began. We are withholding their names from this letter for privacy reasons.

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.

Investigation to Date:

The Student is a XXXXX grade student at West Cottonwood Junior High School (School). He was placed on an initial 504 plan in August 2012 due to a medical diagnosis of type 1 diabetes mellitus for which he wears an insulin pump during school hours. A 504 meeting was held at the beginning of 2016-17 school year in which, among other things, a 504 team agreed to implement an accommodation requiring that the School have, at all times, on-campus personnel trained to assist the Student with all aspects of his diabetes related care.

Through interviews with District and School staff, OCR learned that the school summoned the Student's mother to the school on five separate occasions to attend to needs relating to the student's diabetes because the school did not have any staff members trained to assist the student in certain matters relating to his diabetes.

However, in June 2017, the District informed OCR that on April 18, 2017, ten School staff members received the appropriate training on the Student's disability and that in the future there would be a staff member on campus at all times to assist the student.

Additionally, OCR's investigation revealed that the student's grades have dropped significantly over the course of the past two school years. The student finished the 2015-16 school year with a 3.2 grade point average and a class standing of 42 out of 97. Through the first two quarters of 2016-17 the student is maintaining a 1.0 grade point average and a class standing of 82 out of 95. In separate interviews with OCR both the complainant and District expressed a belief that the drop in the Student's academic performance is the result of the 504 plan itself. OCR noted that the Student's drop in academic performance did not trigger additional action by the 504 team, a potential deficiency under section 504.

Resolution Agreement:

Prior to the completion of OCR's investigation, the recipient asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On July 10, 2017, the Recipient submitted the enclosed signed resolution agreement (the Agreement) to OCR. The agreement requires the staff at West Cottonwood Junior High School to conduct training on all provisions of section 504 and to conduct two 504 meetings in order to determine the effect the Student's 504 plan is having on behavior and academic performance. When fully implemented, the Agreement will address the compliance issues identified by OCR.

OCR will monitor the recipient's implementation of the Agreement. When OCR concludes the recipient has fully and effectively implemented the terms and obligations of the Agreement and

is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If the recipient fails to implement the Agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the Agreement. Before initiating administrative (34 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the recipient written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR's investigation of the complaint. These findings 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. 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.

Please be advised that the recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance the District personnel, especially Laura Merrick, extended to OCR in resolving this complaint. We look forward to receiving the District's first reports about its implementation of the Agreement by September 1, 2017. If you have any questions, please contact Barry Jointer at 415-486-5543 or Barry.Jointer@ed.gov.

Sincerely,

/s/

James Wood
Team Leader

Enclosure: Resolution Agreement