



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

December 22, 2017

VIA ELECTRONIC MAIL

Denise R. Jaramillo
Superintendent
Alhambra Unified School District
1515 W. Mission Road
Alhambra, California 91803
jaramillo_denise@ausd.us

(In reply, please refer to case no. 09-17-1672.)

Dear Superintendent Jaramillo:

In a letter dated October 31, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified the Alhambra Unified School District (District) of the above-referenced complaint alleging discrimination on the basis of disability. In that complaint, the Complainant¹ alleged that the District denied the Student a free, appropriate, public education (FAPE) by failing to evaluate the Student for needed special education or related services and failing to provide the Complainant with notice of procedural safeguards after declining that evaluation, and that the District retaliated against the Complainant by requiring the Complainant to sign a behavioral contract to avoid revocation of the Student's permit to attend Park Elementary School (the School).

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 an education system, the District is subject to Section 504, Title II, and their implementing regulations.

Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified in the complaint. This letter summarizes the applicable legal standards, the allegations made in the complaint, and the terms of the resolution reached with the District.

¹ In prior correspondence, OCR provided the District with the names of the Complainant and Student. Their names are not included in this letter for privacy reasons.

Legal Standards

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, 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. 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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Complaint Allegations and Resolution

The Complainant told OCR that her son (the Student) attended the School pursuant to an interdistrict transfer permit. The Complainant alleged that on May XX, 2017, the School's Principal emailed her regarding a behavior incident with the Student. According to the Complainant, the Complainant and the Principal spoke by phone about the incident that same day. During that call, the Complainant stated that she suggested that they discuss whether a Section 504 plan for the Student might be appropriate, which the Complainant said she had also previously raised at a meeting with School staff (including the Student's teacher and assistant principal) in January 2017. The Complainant told OCR that the Principal responded by telling her that the Student did not qualify. The Complainant also told OCR that in declining to conduct an evaluation, the School did not provide any information to her about procedural safeguards under Section 504.

Shortly thereafter, the Complainant received a permit warning letter stating that the Student was at risk of losing his interdistrict permit because of his behavior. The Complainant told OCR that the School thereafter required the Student to sign a behavior contract as a condition for staying at the school that stated that the Student's permit would be revoked if the contract was violated. The Complainant alleged that the warning letter and behavior contract were retaliation for her asserting her rights under Section 504. The Complainant told OCR that she refused to sign the behavior contract and moved the Student to a new school in the District at the beginning of the 2017-18 school year. The Student's new school conducted an evaluation under Section 504 and determined that the Student was eligible for a Section 504 plan, which was put in place in the fall of 2017.

After OCR notified the District of this complaint, the District expressed its interest in voluntary resolution of the complaint, and OCR determined that voluntary resolution was appropriate. The Resolution Agreement (Agreement) signed by the District requires that the District provide training and a guidance memorandum to staff at the School about the School's obligations under Section 504, including regarding the evaluation of students and the required notice to parents regarding procedural safeguards. It also requires that the District offer to reinstate the Student's interdistrict transfer permit to attend the School.

Conclusion

Based on the commitments made in the enclosed Agreement, OCR is closing its investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the Section 504, Title II, and their implementing regulations at issue in the case.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and 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.

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 harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this letter 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Blake Thompson (Blake.Thompson@ed.gov or 415-486-5630).

Sincerely,

/s/

Abony Alexander
Acting Team Leader

Enclosure

cc: Yonit Kovnator, Counsel for District (via email)