



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

January 18, 2018

VIA ELECTRONIC MAIL

Ms. Ana F. Ponce
Chief Executive Officer
Camino Nuevo Charter Academy
3435 West Temple Street
Los Angeles, CA 90026

(In reply, please refer to case nos. 09-17-1615 and 09-17-1685.)

Dear Ms. Ponce:

On August 17, 2017, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Los Angeles Unified School District (District) (09-17-1615) and the Camino Nuevo Charter Academy (Academy) (09-17-1685) (jointly as Recipients). The Complainant alleged that the Student was discriminated against on the basis of disability.¹ Specifically, OCR investigated whether:

1. The District failed to provide the Student with a free, appropriate public education (FAPE) by:
 - a. Failing to evaluate the Student in a timely manner even though it had reason to believe that the Student needed special education or related services because of a disability.
 - b. Failing to implement the Student's Individualized Education Program (IEP) plan once it was finally developed. Specifically, by failing to provide extra time on assignments and failing to allow the Student an opportunity to do written work instead of participate in Physical Education.
2. The Student was subjected to harassment by other students and staff based on disability, and that the Academy failed to respond appropriately and effectively to notice of the harassment.

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 recipients of federal financial assistance and as public education systems, the District and Academy are subject to Section 504, Title II, and their implementing regulations.

¹ OCR informed the Recipients of the identities of the Complainant and the Student in its notification letter. OCR did not include their identities in this letter to protect their privacy.

To investigate this complaint, OCR reviewed documents provided by the Complainant as well as by the Recipients. After carefully reviewing this information, OCR determined that with respect to Issue 1, this issue has been investigated and resolved by a state agency (the California Department of Education (CDE)), and that any remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation of the complaint and there was a comparable resolution process under comparable legal standards. Accordingly, Issue 1 has been administratively closed in accordance with Section 110(a)(2) of OCR's Case Processing Manual (CPM).²

Prior to the completion of OCR's investigation of Issue 2, the Academy informed OCR of its interest in voluntarily resolving the matter pursuant to Section 302 of OCR's CPM, and OCR determined that a Section 302 resolution was appropriate. Accordingly, without admitting to any violation of federal law, the Academy entered into the attached resolution agreement. As such, with respect to Issue 2, OCR did not complete its investigation or reach a conclusion regarding the Recipients compliance with Section 504 and Title II.

The applicable legal standards, findings of fact, and the reasons for OCR's determinations are summarized below.

Issue 1: Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by (1) failing to evaluate the Student in a timely manner even though it had reason to believe that the Student needed special education or related services because of a disability; (2) failing to implement the Student's Individualized Education Program (IEP) plan once it was finally developed, specifically, by failing to provide extra time on assignments and failing to allow the Student an opportunity to do written work instead of participate in Physical Education.

Legal Standards:

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts 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 §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP plan 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

² See, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

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.

Findings of Fact and Analysis:

At the time giving rise to this complaint, the Student was in the XXXXXXXX grade and attended the Academy (an independent charter school within the District). In her complaint, the Complainant (the Student's parent) alleged that the District discriminated against the Student by failing to provide the Student with a FAPE by (a) failing to evaluate the Student in a timely manner even though it had reason to believe that the Student needed special education or related services because of a disability, and (b) failing to implement the Student's IEP once it was finally developed.

During the course of its investigation, the District informed OCR that the Complainant filed the same FAPE issues with the CDE, and that the CDE issued its investigative report on these issues in October 2017. The District also provided OCR with a copy of the CDE's investigative report.

As indicated above, according to Section 110(a)(2) of OCR's CPM, OCR may close a complaint if the allegations filed with OCR have been resolved by another federal, state, or local civil rights enforcement agency or through the recipient's internal grievance procedures, and all allegations were investigated, any remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation of the complaint and there was a comparable resolution process under comparable legal standards. After a review of the documentation collected, OCR determined that Issue 1 was investigated and resolved by the CDE in October 2017 under a comparable resolution process under comparable legal standards. Therefore, OCR is closing Issue 1 pursuant to CPM Section 110(a)(2).

Issue 2: Whether the Student was subjected to harassment by other students and staff based on disability, and that the Academy failed to respond appropriately and effectively to notice of the harassment.

Legal Standards:

The regulations implementing Section 504, at 34 C.F.R. § 104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. 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. School districts are responsible under Section 504, Title II and the regulations 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.

Peer Harassment

Under Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination if it fails to respond adequately. A school district may violate Section 504, Title II and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's

ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

Employee to Student Harassment

School districts 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 school district 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 district is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt 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 district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

Findings of Fact and Analysis:

In her complaint, the Complainant stated that the Student was subjected to numerous incidents of alleged harassment by other students and Academy staff, and stated that the Academy failed to respond appropriately and effectively to notice of the harassment.

Upon receiving this OCR complaint, the Academy conducted a comprehensive investigation into each of the alleged incidents, and provided OCR with its investigative results. Without admitting to any violation of federal law, the Academy expressed an interest in voluntarily resolving this allegation (pursuant to Section 302 of OCR's CPM), and agreed to provide the Complainant with a written response that will: memorialize the incidents of harassment alleged by the Complainant, describe the steps the Academy took to investigate these incidents, and explain the Academy's factual findings and conclusions. After OCR determined that a resolution prior to the completion of the investigation was appropriate, on January 17, 2018, without admitting to any violation of the law, the Academy entered in the attached resolution agreement.

Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the Recipients' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

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 Recipients 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 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, 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.

When fully implemented, the Resolution Agreement is intended to resolve all of the issues raised in this complaint. OCR will monitor the implementation of this Agreement until the Recipients are in compliance with Title II, Section 504 and their implementing regulations, at 34 C.F.R. Part 104 and 28 C.F.R. Part 35, which were at issue in the case. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

If you have any questions, please contact Naghmeh Ordikhani, Civil Rights Attorney, at 415-486-5588.

Sincerely,

/s/

Kana Yang
Acting Team Leader

Enclosure

cc: XXXXXXXX XXXXXXX, Esq., Counsel for the Camino Nuevo Charter Academy