



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 27, 2018

Dr. Andrew Johnsen
Interim Superintendent
Lakeside Union School District
12335 Woodside Ave.
Lakeside, CA 92040

(In reply, please refer to case no. 09-18-1049.)

Dear Interim Superintendent Johnsen:

On October 30, 2017, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Lakeside Union School District (District) which alleged discrimination based on disability. Specifically, the complainant¹ alleged that the District denied the Student a free, appropriate public education when it failed to implement the Student's accommodations in his Section 504 plan related to: (1) inspection of, and parent-teacher collaboration regarding, foods brought to classroom parties and (2) Student-identified buddies at the allergy-awareness table during lunch and snack time.

OCR began an investigation of the complaint pursuant to Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, as amended, and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Federal financial assistance, is a public entity, and is subject to the requirements of Section 504, Title II, and the regulations. Therefore, OCR has jurisdiction over this complaint.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR that it was amenable to resolving the complaint in this manner. OCR and the District entered into the attached

¹ OCR previously notified the District of the complainant's and the Student's names and is withholding their names from this letter to protect their privacy.

agreement to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 or Title II.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

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. 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.

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. 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.

OCR's preliminary investigation showed the following:

The Student attends school in the District. He has a severe peanut allergy and has been known to have anaphylactic reactions when exposed to peanuts. The Student has a Section 504 plan which includes a provision stipulating that he will sit at an allergy-awareness table (Table) during lunchtime and snack time each day with two student buddies who are approved by staff and for whom parent permission slips have been received. The Student's class does not consume food in the classroom. Class parties that include food items on designated occasions are held in a separate classroom.

The complainant alleged to OCR that the District's ineffective administration of the Table constituted different treatment of the Student based on disability. In particular, she alleged that there were barriers to participation for student buddies at the Table – namely, a requirement that student buddies (1) sit at the Table for month-long rotations; (2) wear lanyards at the Table or else be turned away; and (3) bring a packed nut-free lunch to eat at the Table each day of their rotation. Further, she alleged that student buddies could not eat lunch purchased at school at the Table during their rotation, since the Student's school (School) had not determined which school lunches could be safely consumed at the Table.

The complainant also alleged that when the Table debuted, it was not the same size, shape or color as the other tables, and continued to be the only red lunch table among blue lunch tables. Finally, the complainant alleged that as a consequence of specifications of the Table and the barriers to participation

of student buddies, the Student had sat alone at the Table on several occasions for lunch and snack during the 2017-2018 school year, and been denied an equal opportunity to participate in school activities due to his disability.

With respect to the School's practices involving food at class parties, the complainant alleged that in November 2017, a parent of a student (Student 2) in the Student's class had purchased ice cream with nuts from the School for a birthday celebration for Student 2, and a fruit bar for the Student. The complainant told OCR that she was concerned that the School had not notified her in advance of a class birthday celebration that included ice cream, and had allowed the Student to consume a food item purchased on campus that she had not approved.

The District reported to OCR that it had held a series of Section 504 meetings during the past two school years, was concerned about the Student's safety, and had worked extensively with the complainant to allow the Student access to lunch and snack with his peers. With respect to the November 2017 incident, the District stated that School staff had checked the ice cream label to ensure that it was safe for the Student's consumption. It also stated that the School would no longer allow parents to purchase ice cream on campus for student birthday celebrations.

Resolution and Conclusion

In April 2018, OCR contacted the District to discuss the complaint, and the District indicated its interest in voluntary resolution. As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District entered into the attached agreement, signed April 27, 2018, to resolve the complaint.

The agreement requires the District to (1) hold a Section 504 meeting for the Student to discuss the Student's access to services at the school he will attend in the 2018-2019 school year; (2) ascertain which lunches served by the school contain sesame seeds and/or sunflower seeds or have been processed in a facility that also processes peanuts and/or tree nuts and notify parents accordingly; (3) rename the Table and ensure that it has the same color and dimensions as other lunch tables; (4) refine the buddy system at the Table so more buddies, including those who have purchased school lunches that do not contain sesame seeds and/or sunflower seeds or have been processed in a facility that also processes peanuts and/or tree nuts, may sit at the Table; (5) provide EpiPen training and information on anaphylaxis to staff; (6) clarify the School's policies for parents regarding food at class parties; and (7) meet with the complainant to discuss the interplay between the buddy rotation system and the inclusion of buddies who buy school lunches that may be safely consumed at the Table. Since the District agreed to voluntarily resolve the complaint, OCR did not complete its investigation or reach conclusions regarding the District's compliance with Section 504 and Title II with respect to this complaint. OCR will monitor the District's implementation of the agreement.

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. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact the case resolution team.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Katherine Reiche, Currier & Hudson