



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

June 1, 2018

VIA ELECTRONIC MAIL

Dr. Tamra Taylor
Superintendent
Live Oak School District
984-1 Bostwick Lane
Santa Cruz, California 95062

(In reply, please refer to case no. 09-18-1178.)

Dear Superintendent Taylor:

On January 24, 2018, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Live Oak 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 Section 504 plan.

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

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.

amenable to resolving the complaint in this manner. OCR and the District entered into the attached 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.

Facts

OCR's preliminary investigation showed the following:

The Student attends school in the District (School) and has a Section 504 plan. The complainant alleged to OCR that the School had not provided some of the accommodations in the Student's Section 504 plan, including extra time on tests, opportunities for the Student to take brief movement breaks to allow him to refocus, and communication from School staff to support improvement of the Student's impulse control. In addition, the complainant expressed concern that School staff lacked training and sensitivity in working with students with ADHD and impulsivity, and described a situation in which she believed that one of the Student's teachers (Teacher) had treated the Student insensitively due to his disabilities. The complainant also described another situation in late March 2018, in which the District had contacted her and suggested that the Student had taken a bicycle belonging to another student. The complainant subsequently filed an internal complaint with the District alleging discrimination of the Student based on disability and provided a copy of the complaint to OCR.

The District provided documentation to OCR which described the District's implementation of the accommodations in the Student's Section 504 plan, as well as a copy of correspondence between School staff and the complainant which described School staff's concerns about the Teacher's interactions with the Student. The District also provided OCR a copy of the aforementioned internal complaint filed by the complainant, which it told OCR it was in the process of investigating.

Resolution and Conclusion

In May 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 May 23, 2018, to resolve the complaint. The agreement requires the District to (1) contact the complainant to schedule a Section 504 meeting for the Student to discuss the Student's current services and his access to services at the school he will attend in the 2018-2019 school year; (2) contact the Student's teachers to remind them of the Student's accommodations in his Section 504 plan and provide feedback about implementation of the Student's Section 504 plan; (3) provide training for School staff on ability awareness, including guidance about Attention Deficit Hyperactivity Disorder; (4) complete its investigation of the complainant's internal complaint of disability discrimination and provide a copy of its findings to OCR; and (5) revise its template for Section 504 plans. 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.

OCR thanks the District, particularly Jennifer Ann, for its cooperation in resolving this complaint. If you have any questions, please contact the case resolution team.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Jennifer Ann, Director of Student Services