



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

August 16, 2018

Dr. Michael Milliken  
Superintendent  
Belmont-Redwood Shores School District  
2960 Hallmark Dr.  
Belmont, California 94002

(In reply, please refer to case no. 09-18-1331.)

Dear Dr. Milliken:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Belmont-Redwood Shores School District (District). The Complainant alleged that the District discriminated against her son (Student) on the basis of disability.<sup>1</sup> Specifically, OCR accepted for investigation the following allegation:

The District failed to provide the Student with a free, appropriate public education (FAPE) when his XXXXXX grade teacher did not implement the provision of his individualized education program (IEP) requiring him to attend the Learning Center four times per week to support him in the area of writing, and, when he failed to complete a writing assignment on October X, 2017 because he had no Learning Center support, disciplined him by denying him free choice time and forcing him to stand outside the classroom in extreme heat.

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 a public education system, the District is subject to the requirements of Section 504, Title II, and the implementing regulations.

OCR began its investigation by reviewing documents provided by the Complainant and the District, and by interviewing the Complainant. After careful review of the preliminary information gathered, OCR identified one compliance concern and determined that a part of the allegation had been resolved. Prior to the conclusion of the investigation the District expressed interest in voluntarily resolving the compliance concern. The legal standards, facts gathered, OCR's compliance concern, and the District's partial resolution are summarized below.

---

<sup>1</sup> OCR previously identified the Complainant and the Student to the District. We are withholding their names from this letter to protect their privacy.

## **Legal Standard**

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 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.

## **Facts**

The Student is an individual with a disability who entered the XXXXXX grade at XXXXXXX XXXXXX Elementary School (School) at the beginning of the 2017-18 school year. His IEP in effect at the time required him to receive a total of 240 minutes of specialized academic instruction (SAI) weekly, presented in 60 minute sessions in the School's Learning Center four times per week. The Learning Center is staffed by an RSP teacher.

On XXXXXX, October X, 2017, the Student was not allowed to participate in free choice time inside of the classroom. The Teacher instead directed him to wait outside for approximately thirty minutes while his class watched a film inside. It was approximately 89 degrees outside and the Student had to stand up because the only seating was in direct sunlight. When the Complainant arrived on campus that day she stated that the Student was overheated, upset, and had pain in his legs. The Teacher reported to the Complainant via email that the Student had missed free choice time because he had refused to do any work that day and the day before. The Complainant told OCR that the Student was denied free choice time because had not completed a writing assignment because he did not understand it; she also stated that he had requested to go to the Learning Center instead and was not allowed to. The Complainant complained to the Principal about this incident and also filed a police report.

The Complainant reported to OCR that after the October X, 2017 incident the Student told her that he had not been going to the Learning Center four days per week. Upon OCR's inquiry, the Student recalled that sometimes he went four times per week but sometimes he only went two or three times per week. The Complainant said that this had happened from the beginning of the school year, around August XX, 2017, up until the day of the incident. The RSP teacher did not document the Student's Learning Center sessions.

On XXXXXX, October X, 2017, the Principal began an investigation of the incident. She met with the Teacher and emailed the parents on October XX, 2017 and again on October XX, 2017. The Principal informed the parents that the Teacher would no longer be organizing free choice time in this manner, that what she had done did not meet the Principal's expectations, and that a significant adjustment in planning and execution was needed. The email also stated that the Teacher was aware of this and had agreed to reconfigure free choice time in a manner that ensured the safety and supervision of students at all times.

On October XX, 2017 the parents sent an email to the District Director of Special Programs (DSP), again complaining about the incident. The DSP replied to the Complainant via email on the same day, stating that the District took her concerns very seriously and would respond. On November X, 2017, the Principal met with the Complainant and reassured her that the Teacher's conduct was being addressed.

The Principal requested an IEP meeting to discuss the incident, which was held on November XX, 2017. The DSP told the Student during the meeting that she was sorry that the incident had happened, that it should not have happened, and that they were working to make sure that it would not happen again. The team also discussed a plan to return the student to school with transition support and transfer him to another teacher's class, Teacher 2. The team also developed a schedule that documented the specific times when the Student would be pulled out for the Learning Center each week.

According to his attendance records, the Student had perfect attendance from the beginning of school, August XX, 2017, through October XX, 2017. August XX, 2017 was a Wednesday; the first full week of school was the week of August XX, 2017. From the first full week of school and October X, 2017, the day of the incident, school was in session for six weeks. In November 2017, the Student was absent seven days; in December 2017 and January 2018 he was absent a total of two days; and in February 2018 he was absent eight days. The Student was absent two days the first week of March 2018 and his parents removed him from school after March XX, 2018. He remained on home-study until the end of the 2017-18 school year. The District acknowledged that there were two days while the Student was at school, on October XX, 2017, and November X, 2017, when the RSP Teacher was absent and there was no substitute staffing the Learning Center.

The District reported to OCR that, as a result of the October X, 2017 incident and another, the Principal refined the Positive Behavior Interventions and Supports (PBIS) staff handbook in January 2018 to include information on maintaining student dignity in all tiers of behavior support. Page 6 of the new handbook stated that, when responding to unwanted behavior, School personnel were expected to respond only in ways that maintained the safety, well-being, and dignity of the child; staff were required to maintain a safe and calm learning environment and minimize the loss of instructional time. On March XX, 2018 all School staff attended training on the updated handbook.

Finally, the District informed OCR that the Teacher did not return to the District as of the 2018-19 school year.

## **Resolution**

Regarding the specific incident that took place on October X, 2017, pursuant to OCR's Case Processing Manual (CPM)<sup>2</sup>, Section 108(i), OCR will dismiss an allegation when OCR receives credible information indicating that it has been resolved or is no longer appropriate for investigation. The evidence gathered thus far shows that this portion of the allegation was resolved through action taken by the District prior to the Complainant filing her OCR complaint. Specifically, the Principal met with the Teacher and informed the Complainant in writing that: the Teacher would no longer be organizing free choice time in this manner; the Teacher's approach did not meet the Principal's expectations and needed significant adjustment in planning and execution; and the Teacher agreed to reconfigure free choice time to ensure the safety and supervision of students. In addition, the Principal met with the Complainant and reassured her that the Teacher's conduct was being addressed. Further, the Student's IEP team met to

---

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

discuss the incident, the DSP apologized to the Student and assured him that this would happen again, and the team transferred the Student to another classroom and provided transition support. The Principal also modified the School's PBIS staff handbook and trained staff. Finally, as of the 2018-19 school year the Teacher is no longer employed by the District. Accordingly, because this part of the allegation has been resolved OCR is dismissing it as of the date of this letter.

However, upon review of the facts gathered to date, OCR identified the following compliance concern. Based on the Student's recollection and the RSP teacher's lack of documentation of services, OCR is concerned that the Student did not receive Learning Center support of four 60-minute sessions per week, as required by his IEP, from August XX, 2017 to October X, 2017. OCR is further concerned that the Student did not receive such support on October XX, 2017 and November X, 2017 when the RSP Teacher was absent and there was no substitute in the Learning Center. OCR did not complete its investigation of this part of the allegation, and therefore has not reached a conclusion as to whether the District violated Section 504 and Title II with respect to implementation of the Student's Learning Center services. In order to complete its investigation and reach a compliance determination regarding this part of the allegation, OCR would need to review additional data and conduct interviews of School personnel. However, the District requested to enter into a Resolution Agreement pursuant to Section 302 of the CPM to address the identified compliance concern. OCR determined that a Section 302 Agreement was appropriate in this case. The District, without admitting to any violation of law, signed the attached Resolution Agreement (Agreement) which is aligned with the complaint allegation and the information obtained by OCR thus far during its investigation.

Under the Agreement, the District agreed to extend a written offer to the Complainant to provide, or arrange with an agreed-upon outside agency to provide, the Student with eight 60-minute sessions of SAI by qualified personnel to address the Learning Center goals documented in his current IEP and, if the Complainant accepts, to deliver such services. The District also committed to developing and implementing a process for service providers to consistently and accurately document services provided to students in the School Learning Center.

## **Conclusion**

Based on the commitments made in the attached Agreement, OCR is closing the investigation of the complaint as of the date of this letter and is notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address the complaint allegation. OCR will monitor the implementation of Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the complaint.

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 issue other than that addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, retaliate, 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 a complaint with OCR 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, it will seek to protect, to the extent provided by the law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact me at (415) 486-5555.

Sincerely,

/s/

Rhonda Ngom  
Acting Team Leader

Attachment

Cc: Jan E. Ellard  
Deputy County Counsel  
County of San Mateo