



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 17, 2018

Randal S. Bassett
Superintendent
Fontana Unified School District
9680 Citrus Avenue
Fontana, California 92335

(In reply, please refer to case no. 09-18-1358.)

Dear Superintendent Bassett:

On March 30, 2018, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Fontana Unified School District (District). The complainant¹ alleged that the District had discriminated against his son (Student) based on disability. Specifically, the complainant alleged that the District:

1. Subjected the Student to different treatment on the basis of disability by requiring that he pick up trash in his physical education (PE) class, and then subsequently failing to respond adequately to the complainant's complaint of disability discrimination with respect to the requirement to pick up trash;
2. Retaliated against the Student in response to the complainant's complaint of disability discrimination with respect to the requirement to pick up trash by inventing a story about the Student hitting a fellow student; and
3. Subjected the Student to different treatment on the basis of disability by failing to recognize the Student with an award for earning a high GPA as it does its non-disabled students who earn high GPAs.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations.

¹ OCR notified the District of the complainant's and Student's names at the beginning of the investigation. We are withholding their names from this letter for privacy reasons.

Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

OCR gathered evidence through interviews with the complainant and District staff and also reviewed documents and correspondence provided by the complainant and the District. With respect to allegations one and two of this complaint, based on the information obtained, OCR found insufficient evidence of noncompliance with Section 504 and Title II.

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. With respect to allegation three of this complaint, prior to the completion of OCR's investigation, the District informed OCR that it was amenable to resolving allegation three in this manner. OCR and the District entered into the attached resolution agreement to resolve allegation three. Accordingly, OCR did not complete its investigation of allegation three or reach conclusions regarding the District's compliance with Section 504 and Title II. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the reasons for OCR's determinations.

Legal Standards

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.

The Section 504 regulations, at 34 C.F.R. §104.61, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

Allegation One

The Student was XXXXXXXX-years-old during the 2017-2018 school year and has an Individualized Education Program (IEP). During the 2017-2018 school year, he was enrolled in a certificate of completion program in the District.

The complainant told OCR that he and the Student's mother were upset when they learned from another student that the Student had been picking up trash at school during the fall 2017

semester. The complainant also expressed concern that he had not heard directly from the Student's school (School) that the Student had started picking up trash. The complainant added that the Student became upset after the School informed him that he could no longer pick up trash at school because he thought that he was in trouble and the School was upset with him.

On October XX, 2017, in an e-mail to the principal (Principal) of the School about another issue, the complainant notified her that the Student had come home crying and told his family that he was upset because he thought he was in trouble and been instructed not to pick up trash anymore.

The District told OCR that the Student had not been told to pick up trash but had started doing so on his own. The District provided an account from the Student's PE teacher (Teacher), which described the circumstances under which the Student's trash collection began. After completing a mile run in PE, the Student would use any remaining time to start picking up trash. When the Teacher would ask him not to do so, the Student became upset and expressed concern about how messy the PE area was. The Teacher explained in the District's account that the Student's decision to use his bare hands to pick up trash was of particular concern, which is why the Teacher brought him gloves and a trash bag so he would no longer continue to pick up trash with his bare hands. When the District heard from the Student's family that they felt that the Student was picking up trash because he had been instructed to do so, the Teacher told the Student that he could no longer pick up trash, and the Student became upset.

The Assistant Special Education Local Plan Area (SELPA) Director (Assistant Director) confirmed to OCR that the Teacher had attended the Student's IEP meetings and was aware that the Student had a disability. She added that the District did not have a record of any correspondence from the Student's family about the Student picking up trash apart from the October XX, 2017 e-mail from the complainant. She also told OCR that the complainant's October XX, 2017 e-mail did not reference the Student's disability or allege that the District had discriminated against the Student based on his disability by asking him to pick up trash.

Resolution

OCR reviewed correspondence between the District and the complainant and did not identify any correspondence in which the complainant alleged that the District had discriminated against the Student based on disability by asking him to pick up trash. Rather, in his e-mail to the School, the complainant expressed concern that the Student was in trouble and had experienced distress upon being told that he could no longer pick up trash. Consequently, OCR finds insufficient evidence of noncompliance with Section 504 and Title II with respect to Allegation One.

As a matter of technical assistance, OCR notes that the Teacher, who observed the Student picking up trash and provided him with gloves and trash bags, was aware that the Student was a student with a disability and had an IEP. OCR recommends that if the Student engages in behaviors similar to those in which he engaged during the 2017-2018 school year – namely, picking up trash and then experiencing distress when instructed to stop doing so – School staff

contact an administrator and the Student's IEP team so the IEP team may convene a meeting, discuss the Student's behaviors and identify any supports that may be appropriate.

Allegation Two

The complainant alleged to OCR that the School's invention of a story about the Student hitting another student with a rock constituted retaliation for his having complained about the Student picking up trash at school. The complainant also alleged that the School didn't know the name of the student at whom the Student threw a rock and fabricated the incident.

The District provided OCR a copy of the complainant's correspondence regarding the incident. OCR learned that on December XX, 2017, the complainant sent a letter to the District in regard to an accident involving the Student. In the letter, the complainant asked for further details, including when the Student had been hit on the head with a ball, when the Student was alleged to have hit another student with a rock and whether the Student had experienced any behavioral consequences as a result. The complainant reported that the Student had come home crying because his teacher was upset with him.

The District also provided OCR with a copy of a log in which a School staff member (Teacher 2) described what had happened. In the log, dated December XX, 2017, Teacher 2 noted that the Student had been hit in the head with a basketball and was then taken to the nurse and given ice. Teacher 2 also noted that another student (Student 2) had reported that the Student had thrown a rock and hit him in the head. Teacher 2 had spoken with the Student, who was very apologetic and began crying. Teacher 2 assured the Student that everything would be okay and advised him that he needed to tell an adult if he was upset rather than throw rocks.

The Director of Special Services (Director) responded to the complainant's letter in a letter dated January X, 2018. The Director's response affirmed that the Student had been accidentally hit by a basketball and that the Student had thrown a rock at Student 2. The letter noted that Student 2 was unhurt, the incident had not been reported to school police and there had been no behavioral consequences for the Student. The letter also noted that Teacher 2 had spoken to the Student about the incident and that the Student had admitted to throwing the rock. At the conclusion of the letter, the Director informed the complainant that she had sent a copy of the District's complaint procedures via e-mail. The Assistant Director confirmed to OCR that the complainant had not filed any complaints of retaliation with the District in the past six months and that the only complaints of discrimination pending were complaints filed with the Office of Administrative Hearings.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the District under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the District can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason

provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Resolution

After reviewing the information provided by the complainant and the District, OCR has determined that the complainant did not engage in a protected activity when he complained about the Student picking up trash and, consequently, has not stated a claim of retaliation. As discussed in Allegation One, the complainant did not allege to the District that the District had discriminated against the Student based on the Student's disability or any other protected class by asking him to pick up trash. Rather, the complainant contacted the District because he believed the District had punished the Student by asking him to pick up trash, and was upset that the District had not notified him that the Student had started picking up trash. Thus, OCR has concluded that there is insufficient evidence of noncompliance with Section 504 and Title II with respect to Allegation Two.

Allegation Three

The complainant alleged to OCR that the Student did not receive any of the awards that the School offers, such as a gold medal, even though he had earned a high GPA in both the fall 2017 and spring 2018 semesters. The complainant also told OCR that he believed that the Student's high GPA qualified the Student for an award, and added that it would be very meaningful to the Student to receive such recognition for his achievements.

The District provided a description of the criteria for two of its awards programs: gold medals and silver medals. In order to earn a gold medal, students have to earn at least 23 points. An "A" is worth four points and only letter-grade-eligible courses, not credit/no-credit courses, count toward the total number of points earned. In order to earn a silver medal, students have to earn between 21 and 22.5 points. An "A" is still worth four points and, again, only letter-grade-eligible courses, not credit/no-credit courses, count toward the total number of points earned. The Assistant Director told OCR that there was also a third awards program, the platinum award, for which no written criteria existed. In order to earn platinum awards, students need to be enrolled in at least four letter-grade-eligible courses and earn a 3.0 GPA or higher.

OCR learned that the Student earned a 3.57 GPA in the fall 2017 semester and a 3.62 GPA in the spring 2018 semester. He enrolled in the same courses both semesters, which included one letter-grade eligible course, PE, for which he earned an "A" and four points. The Assistant Director later confirmed that there appeared to have been a mistake on the part of one of his teachers both semesters with respect to a course in which he had been enrolled both semesters and for which he had not received credit. She also confirmed that he did not receive the platinum award or the gold or silver medal in either the fall 2017 or spring 2018 semester.

The Assistant Director also explained to OCR that students with moderate-to-severe disabilities enroll in all credit/no-credit courses unless their IEP team decides that they may be enrolled in an elective, such as PE, which is a letter-grade-eligible course and for which they may receive points. She also told OCR that these students do not receive gold or silver medals; since they are primarily enrolled in credit/no-credit courses, they would not earn enough points to qualify for either award.

Resolution and Conclusion

In October 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 resolution agreement, signed November 16, 2018, to resolve the complaint. The resolution agreement requires the District to (1) revise its awards criteria to ensure that students with disabilities have an equal opportunity to be considered for selection for any awards or honors; (2) send written guidance to District staff and the parents/guardians of District students advising them of the revised awards criteria; and (3) offer the Student and any similarly situated students at the School any awards for which they were eligible as outlined in the resolution agreement. Since the District agreed to voluntarily resolve this allegation, OCR did not complete its investigation or reach conclusions regarding the District's compliance with Section 504 and Title II with respect to this allegation. 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 this complaint as of the date of this letter and notifying the District by concurrent 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The complainant has a right to appeal OCR's determination with respect to allegations one and two within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to

the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 you and your team, particularly XXXXXXXX XXXXXX, for your cooperation in resolving this complaint. If you have any questions, please contact the case resolution team.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: XXXXXXXX XXXXXX, Assistant SELPA Director