



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 14, 2020

Sent via email

Terry Ann Deloria
Superintendent
Jefferson Union High School District
699 Serramonte Boulevard, Suite #100
Pacifica, California 94015

(In reply, please refer to OCR case number 09-19-1500.)

Dear Dr. Deloria:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Jefferson Union High School District (District). The Complainant alleged that the District discriminated against the Student¹ on the basis of disability. OCR investigated the following issues:

Issue 1: Whether the District failed to provide the Student with a free, appropriate, public education (FAPE) when his Behavior Intervention Plan (BIP) was not implemented in his XXXXX XXXXXX and XXXXXXXX classes; and

Issue 2: Whether the District failed to provide the Student with a FAPE when it did not implement provisions of his Individual Education Program (IEP) plan requiring the Student be assisted by a behavioral coach at the beginning of the 2019-2020 school year.

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 entity, the District is subject to Section 504, Title II, and their implementing regulations.

OCR investigated the allegations by interviewing the Student and Complainant and reviewing documentation and other information provided by the District. Prior to reaching a final determination on the District's compliance, the District expressed to OCR its interest in resolving the allegations pursuant to Section 302 of OCR's Case Processing Manual (CPM) and OCR determined that it was appropriate to do so.² OCR's findings of fact, legal standards, and resolution of this matter follow.

¹ OCR identified the Complainant and Student in its July 19, 2019 notification letter to the District. We are withholding their identities in this letter in order to protect their privacy.

² A copy of the CPM can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

Findings of fact

In the 2018-2019 school year, the Student was in XXXX grade at a District high school (School). He has an IEP under Other Health Impairment (OHI) and Specific Learning Disability (SLD); the Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). The Student's disability impacts his involvement and progress in the general curriculum due to his challenges in phonological processing, reading, maintaining focus, and impulsivity.

The IEP in effect for the Student at the time of the OCR complaint included goals addressing math skills, writing, on-task behavior, reducing disruptions, and self-advocacy. The IEP included a behavior intervention plan, and the Student received behavioral coaching services from an outside provider through his IEP. The Student's IEP included the following relevant supports directed to school personnel: "maintain neutral tone and affect. Ask once for productivity neutrally rather than engage in struggle for control. Give student option of taking break in main office, if behavior escalates. [Offer] student option to take break in non-threatening tone." It is not clear from the Student's description to OCR or the IEP how frequently the Student was supported by the behavioral coach (or how many hours of such services the District offered), but it appears to have been at least several hours daily while school was in session.

In February through May 2019, several teachers, including the Student's XXXXXXX and XXXXX XXXXXX teacher (Teacher A), and other school staff emailed school administrators objecting to the Student's behavior in the classroom and on campus. They alleged that the Student used rude and profane language and gestures toward school staff and students, shouted in the hallways, talked and/or interrupted teachers during class, left class without permission, and engaged in other disruptive behavior. Based on the information provided by the District and the Student, it appears that the District responded to these emails by meeting with the Student, emailing the Student's parents, assigning him to detention, facilitating a meeting between the Student and Teacher A to discuss the concerns, and similar actions. In addition, throughout this time, the Student continued to work with his behavioral coach. The Student told OCR that his behavioral coach helped him de-escalate, find ways to calm down when he became upset, and think through his behavior. District records also document that the Student apologized, with the support of his behavioral coach, on at least several occasions to teachers after acting inappropriately toward them.

On May X, 2019, the Student alleged to the Complainant that he had removed himself from Teacher A's class because they did not get along and Teacher A had "flipped [the Student] off"; the Complainant notified the Principal of the Student's allegation. The Principal promptly began an investigation of the Student's allegation. On May XX, 2019, the Principal emailed the Complainant to notify her that she had completed her investigation of the alleged May X, 2019 incident. The Principal wrote that "appropriate steps" were taken, but she could not disclose details "because it is a personnel issue." She also asked the Complainant how she believed they might address the Complainant's concern about the learning environment between the Student and Teacher A. On May XX, 2019, the Complainant asked via email that the Student be given the opportunity to make up any failed assignments or tests from Teacher A's classes. The Special Education Director agreed that they would give the Student the opportunity to make up failed assignments or tests from those classes, and that the Student's behavioral coach would provide support to the Student in completing the assignments. According to the Student, he did not pass the XXXXX XXXXXX class that semester, and he believes this was because Teacher A treated him unfairly.

The Complainant told the District before the end of the 2018-2019 school year that the behavioral coaching services had been a positive support for the Student, and the family wanted the Student to continue receiving

behavioral coaching services in the next school year. The Complainant told OCR that she believed the District would have the behavioral coaching services in place at the beginning of the school year.

When the school year resumed on August XX, 2019, the District had not contracted with the behavioral coaching provider for services to the Student. The Special Education Director told the Complainant at the time, and later explained to OCR, that they were working on the issue and attempted to set up the services through another means, such as using a paraprofessional. However, the Complainant objected to having the services provided by anyone other than the same behavioral coaching provider. The Student did not receive behavioral coaching services from the first day of school through early September 2019. During less than one month, he was suspended for five days, and the District's documents show that he engaged in other disruptive and offensive behavior for which he was not suspended. In early September, he was arrested for an incident at school and incarcerated in juvenile detention. The Student enrolled in the juvenile detention center's education program and is not currently re-enrolled in the District.

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 education 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.

Analysis

With respect to Issue 1, the Student's IEP and BIP addressed how school personnel should respond to incidents where the Student acted impulsively or defiantly by using a non-threatening tone and not escalating the situation. The alleged behavior of Teacher A toward the Student is concerning because it indicates that Teacher A failed to implement the Student's IEP and BIP regarding behavior.

Issue 2 alleged that the District failed to provide the Student with behavioral coaching at the start of the 2019-2020 school year. OCR's investigation showed that the District did not have behavioral coaching services in place for the Student at the beginning of the school year and this issue was not resolved before the Student was arrested in early September 2019. OCR's investigation also showed that the District and the Complainant were attempting unsuccessfully to rectify the situation, but at the same time, the Student was having frequent disciplinary issues which may have been related to the lack of behavioral coaching.

Prior to reaching a final determination on the District's compliance under the two issues investigated by OCR, the District expressed its interest in resolving the allegations and OCR determined that it was appropriate to resolve them through a resolution agreement pursuant to Section 302 of OCR's CPM. Through the enclosed resolution agreement, the District agrees to offer compensatory services to the Student and to provide training to administrators and school psychologists at the Student's former high school.

Conclusion

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case. OCR's determination in this matter 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. 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 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Laura Welp at the San Francisco OCR office at (415) 486-XXXX, or laura.welp@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

cc: Jan Ellard, Counsel for District (by email only)
Christy Ploszaj, Special Education Director (by email only)