



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

March 15, 2021
VIA ELECTRONIC MAIL

Dr. David Vannasdall
dvannasdall@ausd.net
Superintendent
Arcadia Unified School District
150 South 3rd Avenue
Arcadia, CA 91006

(In reply, please refer to case no. 09-20-1449.)

Dear Superintendent Vannasdall:

This letter is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Arcadia Unified School District (the District). Specifically, the Complainant¹ alleged discrimination based on disability. OCR investigated the following issues:

- 1) Whether the District retaliated against the Complainant and the Student after the Complainant advocated on the Student's behalf in the special education process when, among other things, the District denied the Student's inter-district transfer (IDT) permit for the 2020-2021 school year; and
- 2) Whether the District failed to adequately respond to the Complainant's internal complaints made on or about July 2020 alleging discrimination and retaliation on the basis of disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations.

¹ OCR previously notified the District of the identities of the Complainant and the Student. We are withholding their identities here to protect their privacy.

During its investigation, OCR reviewed information provided by the Complainant and the District, and interviewed the Complainant and District employees with relevant information concerning the legal issues opened for investigation in this complaint.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving the issues in this complaint. Based on the facts gathered to date, OCR determined that it was appropriate to resolve the issues because OCR's investigation identified concerns that can be addressed through a Section 302 resolution agreement (Resolution Agreement). The provisions of this Resolution Agreement are tied to the allegations and the evidence obtained during the investigation and are consistent with applicable regulations.

The applicable legal standards, summary of the evidence obtained to date, and resolution of this matter are summarized below.

Issue #1: Whether the District retaliated against the Complainant and the Student after the Complainant advocated on the Student's behalf in the special education process when, among other things, the District denied the Student's inter-district transfer (IDT) permit for the 2020-2021 school year.

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. 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. The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

Summary of evidence obtained to date

The Student is an XX year old, XXXXX grade student who resides outside of the District's geographic boundaries. From the 2015-2016 school year through the 2019-2020 school year, the Student attended a District elementary school (the School) on an interdistrict transfer (IDT) permit.

Board policy and administrative regulation 5117, the District's annual notifications concerning attendance and enrollment, and information on the District website govern the IDT permit process. Among other things, these policies and procedures state that once a student is admitted to a school on the basis of an IDT permit, the student shall not be required to reapply for an interdistrict transfer and shall be allowed to continue to attend the school of enrollment, unless reapplication

standards are otherwise specified in the interdistrict attendance agreement. Additionally, the policies and procedures state that an IDT permit may be revoked when “1. The student does not maintain satisfactory records in attendance, citizenship and/or scholarship; 2. Parents not following district policy, guidelines, and school rules; 3. Falsification or misleading information the Interdistrict Attendance Permit application or the provision of false or misleading information after the approval of the permit; [and / or] 4. If it is discovered by the district that the parent/guardian of the student knowingly did not provide timely notification that the student no longer resides within the district of residence boundaries originally stated on the approved permit.” Furthermore, the policies and procedures state that the “Interdistrict Attendance Permits may be denied pursuant to BP5117, and/or due to lack of space availability, falsification of information on permit form, or unsatisfactory records in academics, attendance and/or citizenship/behavior. Interdistrict Attendance Permits may also be denied if false residency information is knowingly given upon original enrollment and registration or if it is discovered by the district that the parent/guardian of the student knowingly did not provide timely notification that the student no longer resides within district boundaries.”

While the Student attended the School on an IDT permit, the Complainant raised concerns to District employees about, among other things, the Student’s erratic test scores and struggles with homework completion. The Complainant met with District employees on multiple occasions to discuss supports for the Student. On April XX, 2019, the Complainant requested that the District conduct a special education evaluation for the Student. On April XX, 2019, the School Principal created a log entry on the School’s student information system stating that the Complainant “requires a lot of time from school and teachers. He questions teachers frequently and 3 out of the 4 teachers [the Student] has had will not meet with parents without admin support.”

Twelve days later, on May XX, 2019, the District revoked Student’s 2019-2020 IDT permit and instructed the Complainant to enroll the Student in his home district for the 2019-2020 school year. In the District’s May XX, 2019 letter to the Complainant, the District stated that the 2019-2020 IDT permit, which had been subject to automatic renewal pursuant to the District’s IDT permit policies and procedures, had been revoked because the Complainant provided false information in past IDT permits by listing the XXXXXXXX XXXXXXX Library (the Library) as his place of employment. The Complainant is self-employed as X XXXXXXX, listed the Library as his work address on the Student’s IDT permits because he uses the Library to write, and the Library director had provided letters confirming such. The District stated that the Student’s past IDT permits, up until 2018-2019, had been granted, in part, because the District believed that the Complainant was a Library employee and because the District’s practice is to give some preference to IDT permit applications submitted by parents or guardians who work within the District’s boundaries. The District’s board policies, administrative regulations, and other publicly available information about the IDT permit process do not, however, list employment within the District as a consideration in the IDT permit process or otherwise define what it means to be “employed” within the District’s boundaries in order to receive such preference.

Following further communications between the Complainant and District employees, on May XX, 2019, the Complainant submitted an IDT permit application for the 2019-2020 school year. Following additional communications between the Complainant and District employees, on July XX, 2019, the District reinstated the Student’s 2019-2020 IDT permit to allow the Student to

complete his XXXX XXXX XX XXXXXXXXXXXX school in the District. The letter accompanying the reinstated 2019-2020 IDT permit states, among other things that, “This permit is effective for the 2019-20 school year only. You must reapply if you want to request for your student to attend AUSD in 2020-21 school year.”

The District and the Complainant disagree about the 2019-2020 IDT permit reinstatement and its impact on the Complainant’s ability to apply and receive approval for future IDT permits:

- The District stated to OCR that, among other things, the 2019-2020 IDT permit had been reinstated pursuant to a verbal agreement with the Complainant that (1) the Student would attend his home District during the 2020-2021 school year and (2) the Complainant would not apply for a 2020-2021 IDT permit. The District stated that this verbal agreement was not documented in writing.
- The Complainant stated to OCR that, among other things, the District verbally (1) conditioned the 2019-2020 IDT permit reinstatement on having a “quiet year” with respect to his advocacy on the Student’s behalf and (2) represented that a 2020-2021 IDT permit would be approved if the District had space to enroll the Student and a release were secured from the Student’s home district.

The Complainant stated to OCR that on August XX, 2019, an Individualized Education Program (IEP) plan meeting was held for the Student. During this IEP meeting, the Complainant disagreed with the IEP team’s recommendation that the Student did not qualify for special education and related services. During the 2019-2020 school year, the Complainant and the District continued their discussions over the Student’s eligibility and assessment for special education services. On or about April XX, 2020, the Complainant submitted his IDT permit application for the 2020-2021 school year.

On June X, 2020, the Student was found eligible for a Section 504 plan.

The next day, on June X, 2020, the District denied the Student’s 2020-2021 IDT permit application because the Student’s “approved [2019-2020 IDT] Permit was for 1 year only.”

On June XX, 2020, the Complainant appealed the 2020-2021 IDT permit denial. On July XX, 2020, the District denied the Complainant’s first level IDT permit appeal because “1. The original reason(s) for denial were deemed valid and appropriate. 2. Additional information was considered but did not warrant a reversal of the district’s original denial.”

On or about July 2020, Complainant submitted a request for an IEE. On July XX, 2020, the Complainant filed a second level appeal of the 2020-2021 IDT permit denial. In this second level appeal, the Complainant alleged, among other things, that the District revoked the Student’s 2019-2020 IDT permit and denied the Student’s 2020-2021 IDT permit in retaliation for his advocacy on the Student’s behalf in the special education process. On July XX, 2020, the District denied the Complainant’s second level IDT permit appeal because, among other reasons, the original basis for denial were deemed valid and appropriate, the Complainant had falsified information on a previous IDT permit, and the Student did not have satisfactory attendance. District employees told

OCR that, as with the District's definition of "employment" within District boundaries, District policies and other public notices concerning the IDT permit process do not specifically define what constitutes "satisfactory attendance." The District Coordinator of Child Welfare and Attendance stated that there are no "set criteria" with respect to defining satisfactory attendance for the purpose of reviewing IDT permit applications, but the District "considers attendance to be 'unsatisfactory' if a student is considered at-risk for chronic absenteeism or has attendance below the District's average."

On August XX, 2020, the Complainant filed a third level appeal of the 2020-2021 IDT permit denial and, among other things, again alleged that the District's continued denial of the Student's 2020-2021 IDT permit constituted ongoing retaliation. On August XX, 2020, the District denied the Complainant's third level appeal.

Compliance concern based on evidence obtained to date

The evidence obtained to date indicates that the Complainant, among other things, engaged in advocacy in the special education process on the Student's behalf and communicated multiple concerns to District employees about retaliation and discrimination in the IDT permit process beginning on or about July 2020. Therefore, the evidence obtained to date indicates that the Complainant engaged in protected activity.

After the Complainant advocated on the Student's behalf in the special education process during the 2018-2019 school year and requested a special education evaluation on April XX, 2019, the District revoked the Student's IDT permit for the 2019-2020 school year on May XX, 2019. Although, the District ultimately reinstated the 2019-2020 IDT permit, the reinstated 2019-2020 IDT permit was limited to one year only and required the Complainant to reapply for the 2020-2021 school year and secure release from the home district. These requirements and the Complainant's continued advocacy on the Student's behalf in the special education process during the 2019-2020 school year were followed by the denial of the Student's 2020-2021 IDT permit application. After the Complainant communicated concerns of retaliation and discrimination on the basis of disability in the IDT permit process, the District continued to deny the Complainant's 2020-2021 IDT permit appeals. As the District's actions with respect to the 2019-2020 and 2020-2021 IDT permits could well dissuade a reasonable person from making or supporting a charge of discrimination and these actions were close in time following the protected activities described by the Complainant, the evidence obtained to date supports a prima facie claim of retaliation.

OCR's investigation identified several concerns with respect to the District's reasons for the initial revocation of the 2019-2020 IDT permit and the denial of the 2020-2021 IDT permit. The evidence obtained to date indicates that the District initially revoked the Student's 2019-2020 IDT permit and denied the Student's 2020-2021 IDT permit subject to discretion in the IDT permit process not otherwise defined by District policy. Specifically, the District does not maintain policies defining what it means to be employed within the District's boundaries or the preference given to such IDT permit applicants, the Student's 2019-2020 IDT permit was reinstated with a one-year limitation following an undocumented verbal agreement that is disputed by the parties, and the District does not maintain policies defining satisfactory attendance for the purposes of reviewing IDT permit applications.

With respect to the District's policies for the IDT permit process and the definition of what constitutes employment within the District's boundaries, the District stated that the 2019-2020 IDT permit was revoked because the Complainant had falsified employment information on past IDT permit applications, even though the Complainant's employment information had not changed since the Student's first IDT permit application in 2015-2016. District policies do not define what constitutes physically working within the boundaries of the District, but District employees who oversee the IDT permit process stated that preference is given for employment in the District's boundaries. Following this, the District cited the 2019-2020 IDT permit revocation on the basis of falsified employment information as one of the reasons why the 2020-2021 IDT permit was denied at every level of the appeals process.

With respect to the 2019-2020 IDT permit reinstatement and the District's denial of the Complainant's 2020-2021 IDT permit application, the evidence obtained to date indicates conflicting information and lack of documentation as to the conditions of the 2019-2020 IDT permit's reinstatement and the 2020-2021 IDT permit application denial. According to the District, the 2019-2020 IDT permit was reinstated, but limited to one year and conditioned on an undocumented verbal agreement that is disputed by the parties. The District's comments on the reinstated 2019-2020 IDT permit stated that the Complainant would need to reapply for the 2020-2021 school year. The Complainant believed that the 2019-2020 IDT permit had been reinstated on the condition that Complainant have a "quiet year" with respect to his advocacy on the Student's behalf and, pursuant to conversations with the District and the District's comments on the reinstated 2019-2020 IDT permit, further believed the 2020-2021 IDT permit application would be approved so long as Complainant received a release from Student's home district and the District had adequate space. Due to these misunderstandings between the Complainant and District arising from the reinstatement of the 2019-2020 IDT permit, the District denied Student's 2020-2021 IDT permit application on the basis that the reinstated 2019-2020 IDT permit was "limited to one year." This limitation was one of the reasons why the 2020-2021 IDT permit appeal was denied at every level of the appeals process.

With respect to the District's policies for the IDT permit process and the definition of what constitutes satisfactory attendance: the District stated that the Student's 2020-2021 IDT permit was also denied for failure to meet satisfactory attendance requirements. This basis for denial was added after the Complainant's second level appeal in which he raised concerns of discrimination and retaliation. While the Student's eight days of absence placed him "at-risk" for chronic absenteeism and below the District's average attendance, attendance criteria for the IDT permit process is not specifically defined in District policy or provided to IDT permit applicants / permit holders and, according to the Complainant, District officials provided conflicting statements concerning such.

In order to make a determination with respect to whether the District's reasons for the initial revocation of the Student's 2019-2020 IDT permit and denial of the Student's 2020-2021 IDT permit were pretext for retaliation against the Complainant and the Student, OCR would need to gather additional information about the Complainant's advocacy at the School site and the degree to which this advocacy played a role in the decisions to revoke the 2019-2020 IDT permit and deny the 2020-2021 IDT permit. Prior to the conclusion of OCR's investigation, the District

expressed interest in resolving this legal issue through a section 302 Resolution Agreement as described below.

Issue #2: Whether the District failed to adequately respond to the Complainant's internal complaints made on or about July 2020 alleging discrimination and retaliation on the basis of disability.

Legal Standard

OCR evaluates the appropriateness of a District's response to notice of disability discrimination by examining reasonableness, timeliness, and effectiveness. What constitutes a reasonable response will differ depending upon the circumstances. However, in all cases the District must conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, remedy the effects of the discrimination, and take steps to prevent the discrimination from recurring.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the District does not tolerate discrimination and will be responsive to any student reports of discrimination. The District also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Summary of evidence obtained to date

The District maintains board policies and administrative regulations describing the process to address complaints or reports of discrimination. District administrators confirmed that the District utilizes the Uniform Complaint Procedure (UCP) process for all complaints of retaliation and discrimination on the basis of disability, and reports or complaints of such should be forwarded to the District's Assistant Superintendent for Educational Services for further response.

On July XX, 2020, Complainant filed a second level IDT permit appeal in which he alleged discrimination on the basis of disability and retaliation. In this second level IDT permit appeal, the Complainant alleged that, among other things, the District discriminated against the Student on the basis of disability when it failed to identify the Student as eligible for special education and related services pursuant to its child find duty; the District revoked the Student's 2019-2020 IDT permit after Complainant requested an evaluation for special education and related services; the District engaged in retaliation when it conditioned the reinstatement of the Student's 2019-2020 permit on the Complainant agreeing to have a "quiet year"; and the District denied the Student's 2020-2021 IDT permit as further retaliation and discrimination. The Complainant carbon copied the District Superintendent and Board Members on his communications describing his concerns of retaliation and discrimination in the IDT permit process.

On July XX, 2020, the District Coordinator of Child Welfare and Attendance notified the Complainant of the second level IDT permit appeal denial. The second level appeal denial stated that "there is no factual evidence to substantiate" the Complainant's allegations of retaliation and discrimination. The second level appeal denial did not describe specific investigative steps or other

actions taken to respond to the allegations or identify the specific District policy used to respond to the Complainant's allegations of retaliation and discrimination.

Compliance concern based on evidence obtained to date

OCR found that the Complainant alleged discrimination on the basis of disability and retaliation as part of the second level IDT permit appeal that Complainant filed with the District in July 2020. The District's policy is to refer all reports of discrimination and retaliation to the UCP process, yet it did not initiate the UCP process in response to Complainant's allegations raised in his second level IDT permit appeal. Instead, a separate inquiry outside of the UCP process was conducted and, while the District notified the Complainant that no factual evidence to substantiate the allegations of discrimination and retaliation had been found, the District did not explain the factual basis, applicable legal standard, or reasoning for this determination.

OCR identified a compliance concern with respect to the District's response to the Complainant's complaint or report of discrimination or retaliation on the basis of disability because the District did not act in accordance with its own policies and procedures concerning reports of discrimination and retaliation and, rather than forwarding the Complainant's report to a UCP process for response, the District responded to the Complainant's report by conducting an inquiry within the IDT permit process.

In order to make a compliance determination with respect to this issue, OCR would need to gather additional information about the nature of the District's inquiry conducted within the IDT permit appeals process. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving this legal issue through a section 302 Resolution Agreement as described below.

Voluntary resolution prior to the conclusion of investigation

Prior to OCR making a final determination with respect to issues #1 and #2, the District expressed an interest in voluntarily resolving the allegations in this complaint pursuant to section 302 of OCR's Case Processing Manual², and OCR agreed it was appropriate to do so. On March 14, 2021, without admitting to any violation of law, the District signed the enclosed Resolution Agreement, which, when fully implemented, is intended to address the allegations in the complaint. 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. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with its terms. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District compliance with any other regulatory provision or to address any issues other than those addressed in this 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

² Case Processing Manual (Aug. 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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.

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

OCR thanks the District and Ms. Meagan Kinsey for their courtesy and cooperation extended to OCR during its investigation. If you have any questions, please contact the case team by email at OCRSanFrancisco@ed.gov or phone at (415) 486-5555.

Sincerely,

/s/

Kana Yang
Team Leader

Enclosure

cc: Meagan M. Kinsey