

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS



50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

April 1, 2021  
VIA ELECTRONIC MAIL

Superintendent Jerry Almendarez  
[jerry.almendarez@sausd.us](mailto:jerry.almendarez@sausd.us)

(In reply, please refer to case no. 09-21-1004.)

Dear Superintendent Jerry Almendarez:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Santa Ana Unified School District (District). The Complainant alleged that the District discriminated against her based on disability. OCR initiated an investigation of the following issues:

- Whether the District discriminated against the Complainant based on disability when it failed to provide the Complainant with Communication Access Realtime Translation (CART) Services to participate in the Complainant's child's (the Student's) Individualized Education Plan (IEP) process, and
- Whether the District retaliated against the Complainant for requesting CART services when a School administrator refused to meet with the Complainant if the Complainant continued to request CART services.

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, including retaliation, 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 prohibits discrimination on the basis of disability, including retaliation, by public entities. The District receives federal funding, is a public education system and is subject to these regulations.

OCR began investigating the complaint by reviewing documents provided by the Complainant and the District, and by interviewing the Complainant and District Counsel. Based on this information, OCR identified compliance concerns. The District signed a voluntary Resolution Agreement to fully resolve these concerns without a full investigation. This letter summarizes the relevant facts, the applicable legal standards, and OCR's resolution.

### **Legal Standards**

Under Title II of the Americans with Disabilities Act of 1990 (“ADA”), a school district, as a public entity, is prohibited from discriminating against qualified individuals with disabilities on the basis of their disability. (42 U.S.C. § 12131.) Specifically, the statute states that, “no qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” (*Id.* At § 12132; 28 C.F.R. § 35.130.) To qualify for the ADA’s protections, an individual must have a disability, which is defined as a physical or mental impairment that substantially limits one or more major life activities; or where the individual has a record of such an impairment; or where the individual is regarded as having such an impairment. (42 U.S.C. § 12101.) Thus, parents with disabilities must be accommodated in meetings and interactions with schools.

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.

### **Facts**

The Complainant is hard of hearing and was the parent of a XXX grader in the District (the Student) during the 2019-2020 school year. The Complainant required services to participate in meetings as she had difficulty hearing when more than one person was speaking. The Complainant’s need for accommodations related to her hearing disability was not in dispute.

On September X, 2019, the Student transferred into the District with an un-singed IEP and was subsequently the target of a fight with another student in October, 2019. The Complainant engaged with the District regarding both the October incident, and the potential provision of special education services for the Student.

On or about October XX, 2019, the Complainant and Principal communicated regarding special education services for the Student. The Complainant wanted the Student’s IEP implemented at the School as the Student was assessed for special education and was determined to be eligible in her previous District. The District did not provide the services because the IEP was not signed. The District stated to OCR that although the Complainant did not sign the prior District’s IEP because she did not agree with it, she believed the District should provide services anyway.

Throughout November 2019, staff at the School clarified next steps related to the IEP process and offered to meet to discuss the Complainant’s concerns. On November XX, 2019, the Complainant requested a meeting to discuss the Student’s safety on campus and requested that CART services be available at the meeting. Staff proposed a meeting on November XX, 2019. CART services were not provided, however a staff member transcribed the meeting. The Complainant stated to OCR that the transcription was not accurate or efficient. The Complainant ended the meeting early because she was frustrated that CART services were not provided and felt she could not adequately participate in the meeting.

The District informed OCR that it used the month of December 2019, to update the availability of listening devices on campus. District employees researched options for accommodations and began the process

of identifying an agency for CART services. The District stated that while it was in the process of securing CART services, it utilized Google Document Transcription. In early December 2019, the Complainant and the District engaged in numerous email correspondence to set up a meeting to discuss how to best support the Student. On December X, 2019, the Complainant emailed the School Psychologist stating that she required CART services for the meeting. On December XX, 2019, the School Psychologist responded that he was working to secure CART services, and that a translation service would be available until CART services were secured.

On January X, 2020, the Complainant emailed the School to reiterate that she was upset that the IEP was not being implemented. The District arranged a meeting on January XX, 2020 to discuss Complainant's concerns. The District attempted to secure CART services for the meeting but was unsuccessful and offered to use Google Document Transcription instead. The Complainant declined to participate in the meeting.

On or about February X, 2020, the Complainant again requested a meeting with CART services. The Director of Special Education stated that she was working on obtaining CART services and requested the names of CART providers Complainant had worked with in the past. The Complainant provided the names of two agencies.

On February XX, 2020, the Director of Special Education emailed the Complainant to confirm that CART services would be available and to schedule an IEP meeting. The Complainant consented to a proposed IEP team meeting on April X, 2020. On March XX, 2020, the District cancelled the IEP team meeting because of school closure related to the COVID-19 pandemic. On April X, 2020, the Special Education Director sent follow-up communication regarding special education services.

On August XX, 2020, the Complainant emailed the District stating that she desired a meeting with the new Superintendent. The District stated to OCR that the Complainant continued to express frustration regarding the October 2019 incident and the failure to provide special education services, even though she continued not to consent to the IEP. The Complainant listed a large group of people she wanted to participate in the meeting. On September X, 2020, the Complainant withdrew the Student from the District. Although the Student was no longer enrolled, the Director of Special Education offered a meeting on September XX, 2020 with CART services. The District stated to OCR that the Complainant was upset that not all the people she wanted to meet with could participate, so the meeting was cancelled and rescheduled for September XX, 2020 with CART services. The Complainant again shared that she disagreed that not all individuals were included and declined the September XX, 2020 meeting.

On September XX, 2020, (11 months after the Complainant's November XX, 2019 request for CART services), the Superintendent emailed the Complainant stating that the District was "in the process of signing an agreement with an agency that can provide [CART] service[s] to meet the needs of our parents and community."

The Complainant stated to OCR that the Principal refused to meet with her if she continued to request CART services. OCR requested additional information related to this allegation from the Principal and the Complainant. Specifically, on March XX, 2021, OCR requested, in writing, any information relevant to the retaliation allegation, including but not limited to dates the Principal refused to meet with the Complainant and supporting documentation such as email correspondence. On March XX, 2021, the Complainant provided OCR with copies of email correspondence with District and School employees, however none of them documented a refusal to meet with the Complainant.

According to the District, it does not have procedures and policies specific to the provision of accommodations for parents and guardians who are deaf and/or hard of hearing. The District has a form entitled Written Translations and Interpretation Request Form.

### **Analysis**

During the 2019-2020 school year, Complainant was a parent in the District. The Complainant was hard of hearing and entitled to accommodations to meaningfully participate the Student's education. Beginning in November 2019, and continuing through September 2020, the Complainant requested CART services for meetings related to the Student's educational program (i.e., the October 2019 Incident and/or special education services). While the District attempted to secure CART services, it utilized alternate accommodations such as Google Translate, which were not effective for the Complainant. District documents showed that CART services were secured beginning February XX, 2020, three months after the initial request. However, based on a September 2020 email from the Superintendent to the Complainant, 11 months after the Complainant's November 2019 request for CART services, the District was still in the process of signing an agreement with an agency to provide CART services.

Nevertheless, during October, November, and December 2019, and continuing in January and February 2020, District staff regularly emailed and wrote the Complainant, describing her rights, the IEP process, and offering meetings. The Complainant declined to provide consent to the IEP and declined to attend many of the meetings offered.

Regarding the retaliation allegation, OCR considers whether the target of retaliation 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 and nonretaliatory 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.

In this case, the Complainant engaged in a protected activity when she requested CART services on November XX, 2019, December X, 2019, and February X, 2020. The Complainant stated that the adverse action was that the Principal refused to meet with her if she continued to request CART services. While written correspondence between the District and the Complainant showed that the District was notified of the Complainant's requests for CART services, OCR's investigation did not produce sufficient information to support the assertion that the Principal refused to meet with the Complainant or that even if the Principal did refuse, that there was a connection between the alleged refusal and the Complainant having requested CART services.

On March 30, 2021, prior to OCR reaching a compliance determination, the District voluntarily agreed to take actions, which when fully implemented, will resolve the issues raised in this case. In summary, the District agreed to: create and adopt procedures for securing timely CART services, provide guidance to District and School staff on the procedures for securing timely CART services, notify parents and guardians of the District's commitment to provide CART services and to its anti-retaliation policy, and send a letter to the Complainant re-affirming its commitment to provide accommodations for deaf and hard of hearing parents and guardians, and its anti-retaliation policy.

### **Conclusion**

OCR informed the District of its compliance concerns and it agreed to resolve allegations through a voluntary Resolution Agreement without a full investigation. 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 issues. OCR will monitor the implementation of the Resolution Agreement until the District complies with the terms of the Resolution Agreement. 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's compliance with any other regulatory provision or to address any issue other than that 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 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. If 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 the courtesy and cooperation extended by District counsel during the investigation. If you have any questions regarding this letter, please contact Rhonda Ngom at [rhonda.ngom@ed.gov](mailto:rhonda.ngom@ed.gov).

Sincerely,

/s/

Sara Berman  
Team Leader

Enclosure

Cc: Sara Young, Esq.