



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

January 15, 2015

Dr. Steven Ladd
Superintendent
Elk Grove Unified School District
9510 Elk Grove-Florin Road
Elk Grove, CA 95624

(In reply, please refer to case no. 09-14-1462.)

Dear Superintendent Ladd:

The U.S. Department of Education, Office for Civil Rights (OCR) has concluded its investigation of the above-referenced complaint against the Elk Grove Unified School District (District). The Complainant alleged that the District discriminated against a student¹ (Student) on the basis of disability. Specifically, OCR investigated the following:

1. Whether the District failed to provide the Student with a free appropriate public education (FAPE) by failing to implement the Student's October XX, 2013 Individualized Education Program (IEP) during the 2013-2014 school year; and
2. Whether the District failed to respond adequately to an internal complaint made by the Complainant on August XX, 2014 alleging disability discrimination/harassment and a failure to provide the Student with a FAPE.²

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations. Section 504 prohibits disability discrimination in education programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives funds from the Department, is a public education system, and is subject to the requirements of 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. Prior to the completion of OCR's investigation, the District informed OCR it would voluntarily take steps to address the compliance concerns raised in the complaint.

¹ OCR informed the District of the Complainant's and Student's identities in our letter notifying it of the complaint. We are withholding them here to protect their privacy.

² OCR did not initially open this complaint on the allegation that the District failed to respond adequately to the FAPE-related component of the Complainant's internal complaint. OCR expanded the scope of its investigation after reviewing the internal complaint.

The District entered into an agreement to resolve the complaint on January 13, 2015. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 or Title II.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

The regulations implementing Section 504, at 34 C.F.R. §104.33, require public schools 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 educational 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. 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.

Additionally, Section 504 and its regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures. The Section 504 regulations, at 34 C.F.R. §104.4, require a recipient to provide students with a nondiscriminatory educational environment; therefore, when a student alleges discrimination on the basis of disability, the District is responsible for determining what occurred and responding appropriately. The District must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If discrimination is found, it should take reasonable, timely, and effective corrective action. The response must be reasonably calculated to prevent the discrimination from recurring and remedy the effects of the discrimination on the target.

OCR's preliminary investigation showed the following:

Allegation One: Whether the District failed to provide the Student with FAPE by failing to implement the Student's October XX, 2013 IEP during the 2013-2014 school year.

- The Student is currently a XXXXX grader at a District elementary school (School). The Student receives services pursuant to an IEP and its accompanying General Education Individual Curriculum Adaption Plan (Grid of Nine). According to her IEP, the Student has a processing disorder that requires specialized academic instruction.

- The Student's October 2013 IEP and Grid of Nine indicate, among other things, that the Student should receive preferential seating and have "text or tests read aloud."³
- On September XX, 2013, the Complainant sent the Student's XXXXXX grade teacher (Teacher) an email asking why the Student had been assigned to a seat in the back of the class. The Complainant informed OCR that the Teacher stated that she was rotating students' seats.
- On January XX, 2014, the Complainant, the Teacher, and a teacher from the School's Learning Center exchanged emails about the Student's academic plan while at the Learning Center, and information about when the Student would be pulled out of class to go to the Learning Center. The Complainant also stated in these emails that she learned that a number of the Student's Learning Center sessions had been cancelled; the Learning Center teacher explained that the Learning Center staff was "off track" and was not able to hold the sessions during the previous week. (He also explained that this "occasional cancelation is accounted for in [the Student's] IEP minutes.") The Complainant also indicated in these emails that she had previously requested information from the School about the Student's Learning Center schedule/plan in October 2013.
- The Complainant told OCR that two weeks before the end of the 2013-2014 school year, she discovered that the Student was not receiving oral testing.
- Upon discovering that the Student was not receiving oral testing, the Complainant requested a meeting with the IEP team. On June XX, 2014, the School and the Complainant agreed to wait until the next school year for the IEP team to convene to discuss this concern and revisit the IEP.
- On August XX, 2014, the Complainant sent a letter to the District's Director of Special Education indicating that, during the previous school year, the Student had not been tested in the manner prescribed in her IEP, nor received preferential seating. She also expressed concerns about the Teacher's conduct toward her (the Complainant), and indicated that the Teacher was condescending and impolite.
- On August XX, 2014, the Complainant attended a meeting with a teacher from the Learning Center and the Student's current XXXXXX grade teacher. During this meeting, a revised Grid of Nine was created, which indicated, among other things, that the Student will "verbally answer written assessment as appropriate." The Complainant indicated to OCR that her concerns about the Teacher's failure to implement the IEP during the previous school year were not discussed during this meeting.
- On October XX, 2014, a triennial IEP meeting was held, and revisions to the IEP were made.
- The Complainant reported to OCR that she is satisfied with how the Student's current teacher is implementing her IEP.

³ It is OCR's understanding that a similar IEP (that included, among other things, provisions for preferential seating and oral testing) was in place during the prior 2012-2013 school year.

Allegation Two: Whether the District failed to respond adequately to an internal complaint made by the Complainant on August XX, 2014 alleging disability discrimination/harassment and a failure to provide the Student with a free, appropriate public education.

- After receiving the Complainant's August XXXX letter, the Director of Special Education spoke with the Complainant on August XX, 2014, and told her that the IEP team would meet to discuss her concerns. With respect to the Complainant's concerns regarding the Teacher's non-FAPE-related conduct, the Director indicated that he would connect the Complainant with the Legal Compliance Specialist (Specialist) so that she could file a complaint.
- On August XX, 2014, the Specialist sent a letter to the Complainant⁴ providing her with a copy of the complaint form. The Specialist indicated that he would normally suggest that the complaining party meet with the School's Principal or Vice Principal first to discuss any concerns before submitting a complaint form.
- On September XX, 2014, the Complainant submitted a complaint form and accompanying emails/letters regarding her FAPE-related and non-FAPE-related concerns with the Teacher.
- On October X, 2014, the Specialist sent the Complainant a letter indicating that he spoke with the Director, and that the Director informed him that "he had not received" the Complainant's August XX, 2014 letter, and "accordingly hadn't responded to" it. The evidence showed, though, that the Director had verbally responded to Complainant's letter before this communication. The Specialist also indicated in this letter that he would close her complaint because she had filed with OCR and, he wrote, once a complaint had been opened for investigation by an outside agency like OCR, "any further response or investigation by the District will be in response to" that agency's investigation.
- On October XX, 2014, the Complainant sent the Specialist a letter indicating she was upset by the Specialist's October XXX letter, particularly because the letter indicated she and the Director had not spoken, when in actuality, they had. The Complainant indicated her concerns were not only limited to those relating to the Student's academics (*i.e.* FAPE-related issues), but more generally about the Teacher's overall conduct.
- The Complainant also contacted the Interim Superintendent on October XXXX indicating that she was unsettled by the District's October XXX letter. The Complainant requested that the District look into her overall concerns regarding the Teacher's behavior, not only those relating to the School's implementation of the Student's IEP.
- On October XX, 2014, the Superintendent and the Complainant exchanged a number of emails about the Complainant's concerns, and the Superintendent informed the Complainant that she should contact the Director of Certified Personnel with any concerns or questions about the complaint process. The Complainant told OCR that she did not feel this exchange addressed her concerns about the District's failure to investigate the Teacher and the Specialist's October XXX letter.

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.

⁴ This letter was addressed to the Student, but OCR believes it was intended for the Complainant, as the letter refers to the Complainant's conversation with the Director.

Prior to the completion of OCR's investigation, the District entered into the attached agreement to resolve the allegations in the complaint. The agreement requires that the District: a) convene an IEP meeting to determine whether the Student requires compensatory services to remedy effects of the District's alleged failure to implement the IEP during the 2013-14 school year; (b) provide a Section 504 training for all School administrators, teachers, and other employees who provide instruction to students with disabilities on the obligation to provide a FAPE to students with disabilities under Section 504 and its implementing regulation; c) respond to the Complainant's non-FAPE-related complaint about the Teacher's conduct pursuant to the District's appropriate policies and procedures; and d) send the Complainant a letter acknowledging the District's failure to fully respond to her allegations that the District failed to implement the Student's IEP during the 2013-14 school year, and invite her to meet with District representatives to discuss any concerns she has regarding the Student's education and how her complaint was resolved.

Because the District voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Section 504 or Title II. 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 complainant simultaneously. 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 whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant 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.

OCR would like to thank William Tollestrup, Director of Special Education, and other District staff, for their efforts and cooperation during this process. If you have any questions about this letter, please contact Suzanne Taylor, OCR attorney, at (415) 486-5561 or Naghmeh Ordikhani, OCR attorney, at (415) 486-5588.

Sincerely,

/s/

Anamaria Loya
Team Leader

cc: William Tollestrup, Director of Special Education

Enclosures:

Copy of the Agreement to Resolve