



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

March 15, 2016

Dr. Steven Martinez
Office of the Superintendent
Twin Rivers Unified School District
3222 Winona Way North
Highlands, California 95660

(In reply, please refer to case no. 09-15-1553.)

Dear Superintendent Martinez:

On September 22, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Twin Rivers Unified School District (District). The complainant alleged that the District discriminated against her daughter (Student) on the basis of disability.¹ Specifically, OCR investigated the following issues:

1. Whether the Student was subjected to different treatment on the basis of race and disability by a substitute teacher and the District failed to respond adequately to the complainant's March X, 2015 complaint of discrimination.
2. Whether the Student was subjected to harassment by other students based on disability and the District failed to respond appropriately and effectively to the complainant's March XX, 2015 uniform complaint of the harassment.
3. Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's preferential seating modification.²
4. Whether the Student was subjected to retaliation on March XX, 2015, when the District's afterschool program director threatened a group of students with a write-up and lobbied other parents against the complainant.³

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulation. Title VI prohibits discrimination on the bases of

¹ OCR previously provided the District with the identity of the complainant and the student. We are withholding their names from this letter to protect their privacy.

² The notification letter stated that the District failed to implement the Student's 504 plan. Upon further investigation, OCR learned that the Student did not have a 504 plan. The allegation has been amended to reflect the information gathered during the investigation.

³ The notification letter stated that the director also threatened the Student. Upon further investigation OCR learned the Student was not present during the alleged event. The allegation has been amended to reflect the information gathered during the investigation.

race, color, and national origin by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

OCR also investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990, as amended, over disability discrimination complaints filed against public educational entities. The District receives funds from the Department, is a public education system, and is subject to the requirements of Section 504, Title II, and their implementing regulations.

OCR gathered evidence by conducting an interview with the complainant and reviewing documents and other information provided by the complainant and the District. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issues investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

Issue 1: Whether the Student was subjected to different treatment on the basis of race and disability by a substitute teacher and the District failed to respond adequately to the complainant's March X, 2015 complaint of discrimination.

Legal Standard

Under the Title VI regulations, at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states, in relevant part, that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin,

(i) deny an individual any service, financial aid or other benefit;

(ii) provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others; or

(ii) deny an individual an opportunity to participate, or afford an opportunity to participate which is different from that afforded others.

To determine whether a student has been discriminated against on the basis of race under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races under similar circumstances, and whether the treatment has resulted the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of

the evidence must establish that the school district's actions were based on the student's race.

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. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1), a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability,

(i) deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service;

(ii) afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; or

(iii) limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

Facts Gathered to Date

- The Student is currently in the XXXXX grade at an elementary school in the District (School). Allegation 1 concerns events that took place during the 2014-2015 school year when the Student was in the XXXXX grade.
- On December XX, 2014, the complainant requested that the Student be evaluated for an IEP or 504 plan because of her diagnosis of depression stemming from a domestic violence issue. On February X, 2015, the District convened a Student Success Team (SST) meeting for the Student.
- An SST meeting is the first step taken when there is a concern about a child's progress in school. The SST examines the student's academic, behavioral and social-emotional progress and may also develop interventions for the student.

- At the February X, 2015 SST meeting, the SST team determined that the Student's known modifications were "Counseling with Visions" and preferred seating in class. The SST team actions were to "continue to monitor progress" and "check on preferred seating."
- From January XX, 2015 through April X, 2015, the Student's permanent classroom teacher was on personal leave. The complainant's allegations of disability and race discrimination are against a substitute teacher that took over the classroom for 26 school days during the permanent classroom teacher's absence.
- According to the complainant's UCP complaint, the substitute teacher discriminated against the Student based on the following actions:
 - On February XX, 2015, she accused the Student of "being really dramatic and faking her coughing episodes."
 - On February XX, 2015, she told the entire classroom why the Student was seeing the school therapist.
 - On February XX, 2015, she did not allow the Student to rinse blood from her mouth for 20-30 minutes after the Student lost a tooth.
 - On March X, 2015, she attempted to get more information from the complainant about the Student's disability in order to accommodate her restroom visits.
 - On March X, 2015, the substitute teacher called the complainant to inform her that the Student had exhausted her use of the District's allowance of Kleenex, was being dramatic, and after getting angry about not being allowed to blow her nose, was sent to the office. During that conversation, the complainant stated that the substitute teacher "lectured" her about how she marched with Martin Luther King Jr. The complainant told the substitute teacher that this was irrelevant to the Kleenex issue, and the substitute teacher replied that the information showed that she has some form of cultural sensitivity training. The complainant believed that the substitute teacher's mention of Martin Luther King Jr. suggests racial bias.
- The District forwarded the complainant's UCP complaint to the school site principal. He replied via email stating that he took the following actions to address the complainant's concerns:
 - met with the complainant, the Student, and the substitute teacher to determine what the issues were between the parties involved;
 - observed the classroom on multiple occasions and spoke to the classroom as a whole;

- offered to place the Student in a different classroom, which was rejected by the complainant; and
- arranged for a different long term substitute teacher to take over the class until the permanent classroom teacher returned.
- According to the principal's email, the substitute teacher's last day in class was March XX, 2015. On March XX, 2015, the District sent the complainant a letter notifying her of the receipt of her complaint. According to the complainant, she has received no further correspondence regarding her complaint from the District.
- OCR reviewed the District's Uniform Complaint Procedure (UCP). The UCP provides that the District compliance officer may informally resolve a complaint through mediation with the consent of the parties. If the complaint is not resolved through mediation, the compliance officer must conduct an investigation in which the complainant and the District may present relevant information. Within 30 days of receiving the complaint, the compliance officer must prepare and send to the complainant a written report of its investigation and decision. The final written decision will include findings of fact based on the evidence gathered, conclusions of law, disposition of the complaint and rationale, corrective actions if any are warranted, and notice of right and process to appeal. The complainant may appeal the decision within 15 days to the California Department of Education.
- The District asserts that at the time the complainant filed her complaint, the administration was in a transition due to the restructuring of its administrative staff. While the District states that the complainant's concerns were addressed at the school site level, it has not provided OCR a record of a formal response to the complaint, or documentation showing that parties agreed to informal resolution. The District states that the principal determined that the issue was a personality conflict, and not discrimination, but the District has not communicated this to the complainant. In addition, the District admits that that it cannot locate the principal's investigative files, which forms the basis for the nondiscrimination determination.

Analysis

The facts gathered to date raised concerns for OCR that the complainant's allegations with respect to discrimination on the basis of disability were not promptly and effectively resolved because the District provided no formal response to the complaint. In addition, because the district did not investigate the alleged discrimination on the basis of race, OCR cannot determine without further investigation whether the discrimination occurred and whether it limited or impacted the Student's ability to benefit from her education. Accordingly, this matter remains unresolved. Prior to completing the investigation, the District expressed an interest in entering into the enclosed resolution agreement.

Issue 2: Whether the Student was subjected to harassment by other students based on disability and whether the District failed to respond appropriately and effectively to the complainant's March XX, 2015 uniform complaint of the harassment.

Legal Standard

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of 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. School districts are responsible under Section 504, Title II and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Section 504, Title II and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include issuance of notice that disability discrimination is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7[b] and 28 C.F.R. §35.107[b]). The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §104.7[a] and 28 C.F.R. §35.107[a]).

Facts Gathered to Date

- According to the complainant, the Student was threatened and assaulted by several other students during the week of March X, 2015 through the week of March XX, 2015. The District asserts that the school site attempted to resolve the conflict. On March XX, 2015, the school therapist convened a meeting of the parents of the students involved to create an action plan to resolve the disputes. The action plan included a meeting with all the girls in XXXXX grade because it appeared that cliques were forming. It also included individual counseling with the Student and one of the main instigators of the bullying to work on conflict resolution. The parents, including the complainant, agreed to this plan at the meeting.
- Nonetheless, on March XX, 2015, the complainant filed a UCP complaint and concurrently filed a "Suspected Bullying Report" and letter of grievance concerning the aforementioned bullying. According to the complainant, the school site promptly took appropriate action to stop the bullying. However, the complainant was unsatisfied because some of the students involved were not suspended or expelled.
- The District asserts that the concerns raised by the complainant were appropriately and effectively resolved at the school site level, however in support of this statement the District references actions that the school site took prior to the complainant filing a complaint. Moreover, the District has no record of a formal response to complainant's complaint.

Analysis

The facts gathered to date raised concerns for OCR that harassment occurred and that the complainant's concerns were not promptly and effectively addressed because the District has provided no formal response to the complainant's UCP complaint. Without conducting interviews and/or having an opportunity to review the investigative files, OCR cannot make a determination as to whether harassment occurred or whether the complainant's concerns were promptly and effectively addressed. Accordingly, this matter remains unresolved. Prior to completing the investigation, the District expressed an interest in entering into the enclosed resolution agreement.

Issue 3: Whether the District failed to provide the Student with a FAPE by failing to implement the Student's preferential seating modification.

Legal Standard

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 sections 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. 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.

Facts Gathered to Date

- The data provided by the District shows that the Student had an SST, which stated that she should have preferential seating in the front of the classroom.
- According to the complainant, the permanent classroom teacher moved the Student to the back of the classroom. The complainant did not provide the dates on which the Student was seated at the back of the classroom.
- According to the District's narrative response, the permanent classroom teacher was unable to recall exactly where the Student was seated, but remembers that she would have been seated in the front of the classroom.
- After OCR received the instant complaint, on November X, 2015, the Student was referred for a special education assessment. OCR has not received confirmation that this assessment has been completed.

Analysis

The facts gathered to date raised concerns that the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's preferential seating modification. OCR has not yet conducted an interview with the Student, District staff, or the Student's permanent classroom teacher to determine whether the preferential seating was an accommodation related to the Student's disability and to what extent the District failed to implement that accommodation. Accordingly, this matter remains unresolved. Prior to completing the investigation, the District expressed an interest in entering into the enclosed resolution agreement.

Issue 4: Whether the Student was subjected to retaliation when on March XX, 2015 the District's afterschool program director threatened a group of students with a write-up and lobbied other parents against the complainant.

Legal Standard

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.

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 school 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 school 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.

Facts Gathered to Date

- In an email to OCR, the complainant stated that after she filed her UCP complaint and sent a letter of grievance to the District, the District's afterschool program director (Director) threatened the students that the complainant identified as bullies with a "write-up," which caused the students to become upset and cry. The same day, the Director spoke to some of the students' parents about what transpired. Thereafter, the parents, who were once cordial with her, no longer spoke to her.
- In an interview with OCR, the complainant stated that the Director's actions were retaliatory because she believes the Director gave the parents of the students the impression that the complainant was a troublemaker and the reason that their children were upset. The complainant stated that since then, most of the parents involved have moved to different schools and one of the parents is speaking to her again.
- The District's narrative response did not address this allegation, and OCR has not interviewed District staff, so at present we have no information from the District as to their position with respect to the incident, including whether there was a legitimate, nondiscriminatory reason for the Director's alleged actions.

Analysis

The facts gathered to date raised concerns that retaliation occurred. The District has not provided OCR with a response to the allegation of retaliation, and OCR cannot reach a conclusion with respect to this issue without further investigation. Accordingly, this matter remains unresolved. Prior to completing the investigation, the District expressed an interest in entering into the enclosed resolution agreement.

Summary and Resolution

Based on the facts gathered to date, as discussed above, OCR has concerns that: (i) the Student may have been subjected to different treatment on the basis of disability and/or race and the District may have failed to respond adequately to the complainant's complaints; (ii) the Student was subjected to harassment by other students based on disability and the District failed to respond appropriately and effectively to the complainant's complaint; (iii) the District failed to provide the Student with a FAPE by failing to implement the Student's preferential seating accommodation; and (iv) the Student and complainant may have been subjected to retaliation.

Prior to concluding its investigation and to address the issues alleged in the complaint, the District, without admitting any violation of law, entered into the enclosed resolution agreement, which is aligned with the complaint allegations and the information obtained by OCR during its investigation.

Under the agreement, the District will: (i) respond to the complainant's March X and March XX, 2015 complaints; (ii) hold an appropriate placement team meeting (IEP or 504) for the Student to determine what services are needed to provide her with a FAPE; (iii) provide written guidance and training on the District's policies and procedures for responding in a prompt and effective manner to complaints of discrimination and harassment based on race and disability; (iv) provide written guidance and training to school site staff on their obligation to implement modifications and accommodations for students with disabilities; and (v) provide OCR documentation of the completion of all items as required by the terms of the agreement.

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 all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Section 504 and Title II and their implementing regulations, which were at issue in this complaint.

This concludes the investigation of this complaint. 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, 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Abony Alexander, Civil Rights Attorney, at Abony.Alexander@ed.gov or Carolyn Wade, Civil Rights Investigator, at Carolyn.Wade@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Diane Marshall-Freeman, Counsel for District