



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

August 4, 2016

Richard Carranza
Superintendent
San Francisco Unified School District
555 Franklin Street
San Francisco, California 94102

(In reply, please refer to case no. 09-16-1027.)

Dear Superintendent Carranza:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its resolution of the above referenced complaint against the San Francisco Unified School District (District). The Complainant¹ alleged that the District discriminated against the Student on the basis of disability. OCR began its investigation of the following issues:

- 1) The District failed to provide the Student with a free, appropriate public education (FAPE) by excluding the Student from school and failing to implement the Student's Individualized Education Program (IEP) from April 9 to April 30, 2015.
- 2) The District failed to provide the Student with a FAPE by failing to conduct a manifestation determination IEP meeting before changing the Student's placement when he was suspended for five days and further excluded from school after the suspension period had ended for an additional approximately 16 days.

OCR initiated its investigation of the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) 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 has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, as amended, (Title II), and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, and Title II.

¹ OCR notified the District of the identity of the Complainant, her client the Guardian, and the Student when the investigation began, and we are withholding the names from this letter to protect personal privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Section 504 regulations, at 34 C.F.R. §104.35(a), require school districts to evaluate any student who, because of disability, needs or is believed to need special education or related aids and services before initially placing the student and before any subsequent significant change in placement. Subsection (c) requires that placement decisions be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources that is carefully considered and documented. Sections 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. 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 act consistent with the Section 504 regulations in disciplining disabled students.

OCR began its investigation by interviewing the Complainant, the Guardian, and District staff, and by reviewing documents provided by the Complainant and the District.

The Complainant told OCR that after an incident occurred on a School bus on March XX, 2015 between the Student and another student from the same School, the School suspended the Student out-of-school for five days, which ended on April 9, 2015 because of spring break. The Guardian informed OCR that an Assistant Principal, who has since left the District, told her on April 9, 2015 when she came back to the School for a meeting that the Student had to stay away because there was an emergency protective order (EPO) in place. The Assistant Principal declined OCR's request for an interview.

The Principal told OCR that she was present the day of the School bus incident, but out of town on the day of the April 9, 2015 meeting, so she had the Assistant Principal attend the meeting. Even though she was not at the meeting, she told OCR that she was told a San Francisco Sheriff's office employee was at the School that day, and attempted to serve the Guardian with the EPO. She stated that she believed that after the other student's guardian made a police report about the March XX bus incident, the police issued an EPO.

The District could not locate a copy of the EPO, and OCR could not locate a copy of the EPO. The Principal stated to OCR that she was asking District Administrators for assistance in what to do, and that she believed the same Administrators were telling the Guardian on the telephone that there was an EPO in place, and that the Student could not return to the School.

The San Francisco Police Department Incident Report about the School bus incident includes the officer's statement that the Principal told him that the Student was indefinitely suspended, and that she said she was seeking assistance from the District to transfer the Student to another school. The Principal stated to OCR that the other student's guardian filed for a Temporary Restraining Order (TRO) against the Student but because he made errors and XXXXXX XXXXXXXXX XXXXXXXXXXXX, he came to the School and a School Counselor XXX XXXXX XXX XXXXXXXXXXXX XXXXXX XXXXXXXXX provided him with

assistance in filling out and faxing the TRO form to the San Francisco Superior Court. The TRO, which became effective April 16, 2015 pending a later hearing, required the Student to keep 50 yards away from the other student involved in the bus incident. The Principal stated that the School staff help parents fill out forms and paperwork, and that it was not unusual for School staff to XXXXXXXX XXXXXXXX assistance to parents, but that this was the first TRO paperwork she could recall in her four years as School Principal.

The Student's Special Day Class (SDC) Teacher told OCR that she tried to give the Guardian some work packets for the Student to complete during the five-day out-of-school suspension, and that between April 9 and April 30, 2015, she also spoke with the Guardian (with whom she said she had a communication system for when the Student needed more work) and provided some tailored work packets for the Student to complete. She said she never heard from the Guardian during this period that the Student needed more work.

The Principal stated to OCR that she learned from the Assistant Principal that during the April 9, 2015 meeting, the Guardian stopped the meeting and asked for a ten-day notice in response to the District's proposal at the meeting to involuntarily transfer the Student to a different District middle school to receive the same placement. The Guardian confirmed with OCR that she stopped the April 9th meeting because she wanted to wait to hold a meeting until participants she thought would need to be present, and who could best represent the Student's interests, could attend.

The Principal stated to OCR that she believed it was not possible for the Student to continue to get a FAPE at the School because once the TRO was in place April 16, 2015, it would not be possible to keep the Student away from the other student involved in the bus incident because of class passing periods, student assemblies, and other potential yet likely proximity and interactions between the students, which were prohibited by the TRO.

The Student attended the School one school day out of the eleven school days between April 16, 2015, and May 1, 2015 when he was transferred to a different District middle school.

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 school district expresses an interest in resolving the complaint. In June, 2016, the District's representative expressed an interest in resolving this complaint without a full investigation. The District entered into the enclosed Resolution Agreement, which when fully implemented is intended to address all of OCR's compliance concerns in the investigation to date. OCR would have had to complete a full investigation to reach a conclusion regarding the two issues under investigation, but because it did not complete a full investigation, OCR did not reach conclusions as to whether the District complied or failed to comply with Section 504 or Title II with respect to the issues raised by this complaint.

Through the Resolution Agreement, the District agreed to hold an IEP meeting to discuss and determine whether the Student needs compensatory and/or remedial services as a

result of any failure to provide appropriate regular and/or special education or related services between April 9, 2015 and May 1, 2015.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. 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 the agreement until the District is in compliance with Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), §104.35(a) and (c), and §104.36, and the Title II regulations, at 28 C.F.R. §35.103(a), §35.130(b)(1)(i), (ii) and (iii), and 28 C.F.R. §35.130(b)(7). OCR is informing the Complainant of the complaint resolution by concurrent letter. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's investigative process 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. 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 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. 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 appreciates the courtesy and cooperation extended by you and your counsel during the complaint resolution process. If you have any questions, please contact David Christensen at (415) 486-5554, or me at (415) 486-5555.

Sincerely,

/S/

Mary Beth McLeod
Team Leader

Enclosure

CC: XX XXXXX XXXXX (*via email only*)
Sr. Deputy General Counsel