



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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

April 18, 2016

Janet Young Ed.D.  
Superintendent  
Clovis Unified School District  
1450 Herndon Drive  
Clovis, California 93611

(In reply, please refer to case no. 09-16-1129.)

Dear Superintendent Young:

On December 10, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Clovis Unified School District (District). The complainant alleged that the District discriminated against the student on the basis of disability.<sup>1</sup> Specifically, OCR investigated:

1. whether the District subjected the Student to different treatment on the basis of disability by his teacher and the lunch room monitor, and whether the District failed to respond adequately to his complaint of discrimination; and
2. whether the District subjected the Student to retaliation after the complainant notified the Student's Section 504 team that the Student would not be taking medication for his Attention Deficit Hyperactivity Disorder (ADHD), when school staff began to complain about the Student's behavior.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). Section 504 and its implementing regulation prohibit discrimination on the basis of disability by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is, therefore, subject to the requirements of Section 504, Title II, and their implementing regulations.

OCR gathered evidence by interviewing 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 issue one. With respect to issue two, OCR has determined that there is insufficient evidence of noncompliance with Section 504 and Title II. This letter

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<sup>1</sup> 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.

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 District subjected the student to different treatment on the basis of disability by his teacher and the lunch room monitor, and whether the District failed to respond adequately to his complaint of discrimination.*

### **Legal Standard**

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, among other things, 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; and (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.

OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of disability by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to discrimination 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 discrimination, and remedy the effects of the discrimination on the student who was discriminated against. The district must also take steps reasonably calculated 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.

### **Facts Gathered to Date**

- At the time of the events that gave rise to this complaint, the Student was in the third grade at a school within the District. The Student has a Section 504 Plan with the District for a medical diagnosis of ADHD, which manifests both at home and in school settings.
- The complainant told OCR that the school lunch line monitor regularly sent the Student to the back of the line for straying out of line. The complainant explained that the Student was unable to stay in line because of his ADHD. According to the complainant, the Student was last to get his lunch, and therefore he was rushed to finish eating and occasionally unable to complete his meal.
- On September 3, 2015, the Student's mother sent an email to the principal. She stated that the Student had come home very hungry on one occasion because he did not finish lunch, and had to rush through his meal the day before. She asked the principal why the Student was being rushed at lunch. It is unclear from the information provided by the complainant whether and to what extent the principal responded to this initial inquiry. OCR has not interviewed the principal or the Student's mother, and OCR has not yet received documentation from the District regarding the principal's response to the complainant's email.
- On October 23, 2015, the Student's mother sent a second email to the School principal stating that she wanted to file a complaint against the Student's classroom teacher and the lunchroom monitor for unfair treatment. She stated that she believed the classroom teacher was using the student's ADHD diagnosis against him, and was quick to believe other students when they reported that the Student was behaving poorly, but dismissed the Student's complaints or accused him of lying when he reported his classmates' misbehavior. The complainant reported to OCR that he did not receive a response to this email.
- In a phone call with the District, counsel for the District stated that the school site staff attempted to set up a meeting with the Student's parents to address the issues described in the October 23, 2015 email. However, the day after the District received the email, the parents notified the school attendance clerk that the Student would be pulled from the school. The complainant reported to OCR that he enrolled the Student in an online school on October 30, 2015.

### **Analysis**

The facts gathered to date raised concerns as to whether the Student was being treated differently on the basis of his disability and whether the District had promptly and effectively investigated and responded to the alleged incidents of discrimination. Without conducting interviews with District staff and the Student and requesting additional

information from the District, OCR cannot make a determination as to whether discrimination occurred, or whether the complainant's concerns were promptly and effectively addressed. Prior to OCR concluding its investigation and to address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Agreement to Resolve (Agreement), which is aligned with the complaint allegation and the information obtained by OCR during its investigation.

**Issue 2:** *Whether the Student was subjected to retaliation after the complainant notified the Student's Section 504 team that the Student would not be taking medication for his ADHD, when school staff began to complain about the Student's behavior.*

### **Legal Standards**

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.

To constitute protected activity, OCR must find that: 1) an individual communicated, formally or informally, a belief that a recipient's act or policy is discriminatory on the basis of disability; 2) the manner of the opposition is reasonable; and 3) the complainant has a good faith and objectively reasonable, though perhaps mistaken, belief that he or she was opposing unlawful discrimination. It is irrelevant whether the individual in fact erred, as a matter of fact or a matter of law, in his or her belief that illegal discrimination occurred.

### **Facts Gathered to Date**

- The District provided OCR with documentation showing that as of September 4, 2012, the Student's Section 504 file showed that the Student was not taking medication for his ADHD.
- The complainant reported to OCR that on September 25, 2015, during a Section 504 meeting, he notified the Student's Section 504 team that the Student would not be taking medication for ADHD. At this same meeting, the complainant

provided the Section 504 team with a doctor's note that stated the opposite, namely that the Student was taking medication for ADHD.

- When the complainant presented the doctor's note stating that the Student was on medication at the Section 504 meeting, the school principal stated that she requested written clarification from the complainant because previously school staff had understood that the Student was not taking medication for his ADHD. In response, the Student's mother provided a corrected doctor's note on October 12, 2015 that stated that the Student was not taking medication.

### **Analysis**

OCR found that the complainant did not engage in a protected activity when he notified the Student's Section 504 team that the Student was not taking medication for ADHD. The complainant did not allege that the Student had been subjected to discrimination on the basis of his disability at the Section 504 team meeting, nor did he communicate a belief that a District policy was discriminatory on the basis of disability. He also was not providing the notification to advocate for a particular service or to change a particular decision of the District with respect to his son's IEP or otherwise. Consequently, the complainant has not stated a *prima facie* claim of retaliation.

Even if OCR considered notification of the Student's non-medicated status to be a protected activity, the facts described are not sufficient to raise an inference that the alleged actions of the District employees (i.e., documentation of behavior incidents and implementation of consequences) were in response to this notification. The evidence gathered by OCR shows that as early as September of 2012 and continuously thereafter the District knew that the Student was not taking medication. As such, OCR did not find support for the allegation that provision of the same information that was already in the possession of the District on October 12, 2015 would change the way the Student was treated by District employees. For these reasons, OCR concluded that there was insufficient evidence of retaliation to support a finding of noncompliance with Section 504 with respect to this issue.

### **Summary of Resolution and Conclusion**

Under the Agreement, the District will: (1) respond to the October 2015 complaint of disability discrimination; (2) provide written guidance and training to school site staff on their obligation to ensure that students are not discriminated against on the basis of disability and to implement modifications and accommodations for students with disabilities in non-classroom settings; and (3) in the event that the student returns to a school within the District, hold a Section 504 meeting for the student which will, among other things, ensure that the student's classroom teacher is aware of the student's accommodations/modifications, and develop a plan to ensure that the student has full access to the school lunchroom.

Based on the commitments made in the 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 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, Title II, and their respective implementing regulations, which were at issue in the case.

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](mailto:Abony.Alexander@ed.gov).

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure

cc: Karen E. Samman, General Legal Counsel, Clovis Unified School District (by email only)