



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 UNITED NATIONS PLAZA
SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

August 25, 2016

Jose Cruz
Superintendent
Franklin-McKinley School District
645 Wool Creek Drive
San Jose, California 95111

(In reply, please refer to case no. 09-16-1488.)

Dear Superintendent Cruz:

On June 6, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Franklin-McKinley School District (District). The complaint alleges that the District discriminated against the complainant's daughter (the Student) on the basis of disability when it failed to provide her with a free, appropriate public education (FAPE) by failing to: (a) implement the Student's 504 plan; and (b) follow adequate evaluation and placement procedures before disciplining the Student; and subjecting her to disparate treatment on the basis of her disability.

OCR enforces Section 504 of the Rehabilitation Act of 1973 which 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 over disability discrimination complaints filed against public educational entities. The District receives funds from the Department and is a public education entity. Therefore the District is subject to laws and regulations enforced by OCR.

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 §§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.

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 Student attended school in the District, and has had a 504 plan due to a seizure disorder. The complainant alleged that the District failed to implement the Student's 504 plan, pointing to the District's suspension of the 504 plan in October 2015, without offering any notice or process. The 504 Team reconvened on April XX, 2016 and adopted a 504 plan that indicated that the student would not be penalized for tardies and/or absences related to her health status and that the Student would be excused from physical education. Yet, the complainant identified 32 days for which the student accrued unexcused absences, as well many tardies, despite those absences and tardies being allegedly related to her illness. Further, complainant claimed that the District failed to excuse the Student from physical education because of her disability, and then disciplined the Student on four separate occasions for incidents related to her not participating in the physical education class.

During the course of the OCR investigation, OCR spoke with a representative for the District to discuss the allegations and options for resolution, and the District indicated its willingness to take action to resolve the complaint.

On August 18, 2016, without admitting to any violation of Federal laws enforced by OCR, the District voluntarily signed the enclosed Resolution Agreement which commits the District to: (1) conduct training for its teachers and administrators related to 504 plan implementation, including the proper procedures for exiting students from 504 plans and disciplining students with 504 plans; (2) expunge several disciplinary instances from the Student's record; (3) convert several unexcused absences to excused absences in the Student's attendance record; (4) transmit amended discipline and attendance records, with a cover letter explaining the errors, to the Student's subsequent school district; (5) offer the Student's subsequent school district to pay for a comprehensive psychoeducational evaluation of the Student, including academic assessments; and (6) will convene a meeting to evaluate and determine whether the Student needs compensatory education as a result of absences during the 2015-2016 school year.

OCR is closing this complaint as of the date of this letter and concurrently notifying the complainant.

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 in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and other participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions please contact Araceli Martínez-Olguín, Civil Rights Attorney, at 415-486-5589.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure: Resolution Agreement