



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

March 7, 2017

Diann Kitamura  
Superintendent  
Santa Rosa City Schools District  
211 Ridgway Avenue  
Santa Rosa, CA 95401

(In reply, please refer to case no. 09-17-1037.)

Dear Superintendent Kitamura:

On October 18, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Santa Rosa City Schools District (Recipient), where the Complainant alleges that the Student was discriminated against on the basis of her disability.<sup>1</sup> Specifically, OCR investigated whether:

1. The Recipient failed to provide the Student with a free appropriate public education (FAPE) when it suspended her on May XX, 2016 for following safety protocols specific for her disability; and
2. The Student was subjected to different treatment on the basis of disability when the Recipient suspended her and prohibited her from attending the 8<sup>th</sup> grade field trip to the Ashland Shakespeare Festival (Festival); and the Recipient's failure to respond adequately to the Complainant's complaint of discrimination created a hostile environment for the Student on the basis of disability.

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The Recipient receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time prior to the conclusion of an investigation when a recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint with an agreement during the course of an investigation. Prior to the completion of OCR's investigation into this matter, the Recipient informed OCR it was amenable to resolving the complaint in this manner. OCR determined that it was appropriate to resolve the complaint

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<sup>1</sup> OCR previously provided the Recipient with the identities of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

before the conclusion of this investigation; as such, OCR and the Recipient entered into the attached agreement to resolve the issues alleged in this complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the Recipient's compliance with Section 504 and Title II.

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

**Allegation 1:** The Recipient failed to provide the Student with a FAPE when it suspended her on May XX, 2016 for following safety protocols specific for her disability.

### *Legal Standards*

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.

Under 34 C.F.R. §104.37, a school district must provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation. These services and activities may include counseling, physical recreational athletics, transportation, special interest groups or clubs, and other recreational activities.

### *Factual Findings*

OCR's preliminary investigation showed the following:

At the time of the incidents that gave rise to this OCR complaint, the Student attended a charter school (School) in the Recipient. The Student suffers from Attention Deficit Hyperactivity Disorder (ADHD), an executive dysfunction disorder, and a learning disability.

According to the Complainant, on May XX, 2016, the Student left her class to find her counselor in the main office because she was emotionally "triggered." The Complainant told OCR that this was part of the Student's safety protocol in place for the Student in situations when she was triggered. Because the counselor was not in the office, the Student started to head back to class, saw some friends who also experience depression and anxiety, and started chatting with them. A teacher saw them and accused the Student of "cutting" class. The Student was subsequently suspended for 1.5 days, and was told that she was not allowed to participate in the 8<sup>th</sup> grade trip

to the Festival. The Complainant told OCR that the Student had a Section 504 plan in place at the time of this suspension.

The Complainant informed OCR that she tried on many occasions to meet with the School's principal (Principal) to discuss the suspension (and the fact that the Student was simply following her safety protocol) as well as her concern that this punishment was excessive, and not aligned with the Recipient's policies with respect to discipline.

The Complainant also provided OCR with the Student's two Section 504 plans during the 2015-2016 school year (which were dated November X, 2015 and April X, 2016). According to the Complainant, the April X, 2016 Section 504 plan (which was in place at the time of this incident) makes "no mention of a protocol in place for when [the Student] became triggered" because the protocol was only developed after" the April 2016 Section 504 meeting. OCR also reviewed the Student's April 2016 Section 504, and confirmed that it did not include a safety protocol for the Student.

According to the Complainant, it was also after this April 2016 Section 504 meeting that the Complainant requested the reinstatement of the Student's Individualized Education Plan (IEP).<sup>2</sup>

With respect to Allegation 1, the Recipient has not yet provided OCR with its position.

While the Student's Section 504 plan did not include a safety protocol, OCR is concerned that the Student was suspended for 1.5 days for one instance of "cutting class," particularly when she was allegedly outside of her classroom because she was looking for her counselor as a result of being "triggered" (a behavior associated with her disability). Prior to the completion of OCR's investigation, however, in December 2016, the Recipient voluntarily expressed an interest to resolve this matter. OCR determined that it was appropriate to resolve this case before the completion of this investigation.

**Allegation 2:** The Student was subjected to different treatment on the basis of disability when the Recipient suspended her and prohibited her from attending the 8<sup>th</sup> grade field trip to the Festival; and the Recipient's failure to respond adequately to the Complainant's complaint of discrimination created a hostile environment for the Student on the basis of disability.

### *Legal Standards*

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,

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<sup>2</sup> The Student previously had an IEP, but the Complainant and Student requested in April 2015 that the Recipient exit the Student from the IEP. A meeting was later held to develop a Section 504 plan for the Student.

- 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.
- iii. provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others.
- iv. 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.

### *Factual Findings*

OCR's preliminary investigation showed the following:

According to the Complainant, she reached out to the Recipient numerous times about the Student's participation in the Festival. For instance, on April XX, 2016, the Complainant communicated with the School's Program Manager regarding, among other things, the Student attending the Festival in May 2016. The School's Program Manager responded the following

day and said that she will speak with the School's Principal about "ensuring accommodations are provided so [the Student] can [ . . . ] attend the 8<sup>th</sup> grade trip and graduation."

The Complainant also tried to meet with the Principal about the "further punitive disciplinary decision" that the Student will suffer as a result of not being allowed to attend the Festival. On May 12, 2016, the Complainant sent an email to the School's Principal requested a meeting "to discuss your decisions to both suspend and deny [the Student] participation in the [Festival] field trip. As the trip commences in less than a week, we ask that we be able to meet by the end of the work day tomorrow."

On the following day, the Complainant sent another email to the Principal, the Student's teacher (Teacher), and other School representatives, where she stated that "while we are sympathetic to the concerns that must be present for both [the Principal and the Teacher] regarding [the Student's] emotional stability to take such a trip far away from home, we have on many occasions tried to offer solutions so that we all might feel comfortable with her" attending the Festival. The Complainant also said in this email that she and the Student's father previously offered to chaperone the Student at the Festival, but they were not put on the chaperone list; then the Complainant offered to camp somewhere in the vicinity of the Festival to be close to the event in case the Student needed support. The Complainant further stated that the Student is also very close with one of the designated chaperones, and that chaperone indicated that she would be comfortable supporting the Student and having her in her group. The Complainant indicated that despite the many efforts to communicate with the School about finding a solution, the Complainant has received little to no response.

According to documentation provided by the Complainant to OCR, the Principal and Complainant ultimately met on May XX, 2016 to discuss the Complainant's concerns about the field trip. During this meeting, the Complainant told the Principal that she felt like the Student's punishment was excessive, and asked if the Student could still attend the Festival if the Student's father took her to Oregon (where the Festival took place). The Principal said that he would take some time to discuss the matter with the Teacher and would get back to the Complainant within an hour. Within the hour, the Principal called the Complainant and said that he spoke with the Teacher and Director, and that they all felt that if the Student's father or the Complainant "were to transport her, provide separate accommodation, and supervise her during the trip that all parties concerned would feel comfortable with the Student's attendance." The Principal sent the Complainant an email that included an agreement memorializing this arrangement later that evening.

In an email to the Principal on the following day (May XX, 2017), however, the Complainant said that at the end of the previous school day, the Teacher took the Student aside and said to the Student that the Student could not attend the Festival because it would not be fair to him, to the parent chaperones, or to the other kids to have to always be looking over their shoulders, worrying about her. He allegedly said to the Student that it was too much of a burden on him, and that he did not want to be responsible for her. This interaction resulted in the Student asking her father to later take her to the hospital because she was "completely emotionally overwhelmed."<sup>3</sup>

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<sup>3</sup>X---paragraph redacted---X.

The Complainant told OCR that once the Recipient allowed the Student to attend the Festival (with the supervision of the Student's father), the Student and her father drove to try and join the others at the Festival. The Complainant told OCR that she and the Student's father experienced out-of-pocket expenses of \$315.07 for transporting the Student to the Festival.

According to the Complainant, once the Student and her father arrived at the Festival, they were given "the cold shoulder" by the Teacher, the Student's classmates, and the other parents. The Student and her father were also not provided information about the Festival events and other events coordinated by the Teacher, classmates, and parents. The Teacher further made a loud announcement in front of the parent chaperones and other students that the Student was not allowed to be apart from her father.

With respect to Allegation 2, the Recipient has not yet provided OCR with its position.

Based on the documentation provided to OCR by the Complainant, OCR determined that the Complainant raised her concerns about the Student's suspension and her not being allowed to attend the Festival to the School on a number of occasions. OCR found that the Principal ultimately responded to the Complainant, and allowed the Student to participate in the Festival with parent supervision and transportation to the Festival. However, while the Principal eventually met with the Complainant, this did not happen for weeks after she initially raised her concerns. Furthermore, OCR is concerned that the Student was allegedly not provided with information about the Festival events and other events during the Festival that were sponsored by the Recipient, and that the Teacher may have publicly announced that the Student was not permitted to be without her parent during the Festival.

In December 2016, prior to the completion of OCR's investigation, the Recipient indicated its interest in voluntary resolution.

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 and OCR determines that it is appropriate to resolve the complaint before the completion of its investigation. As such, prior to the completion of OCR's investigation, the Recipient entered into the attached agreement to resolve the complaint. The agreement requires the Recipient to, in sum: reimburse the Complainant for her out-of-pocket expenses, up to \$315.07, for transporting the Student to the Festival; provide training to School administrators regarding its responsibility for investigating and responding to allegations of disability-based discrimination; provide Recipient and School administrators, faculty, and staff with a disability harassment training and a written guidance memorandum regarding the Recipient's harassment policies and procedures; and provide training to School administrators regarding the Recipient's obligations under Title II and Section 504, including its obligation to identify and evaluate students suspected of having a disability, and its obligation to consider the appropriateness of disciplining a student with a disability when the student's alleged misconduct or behavior is potentially a result of the student's disability.

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Because the Recipient voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the Recipient failed to comply with Section 504 and Title II. OCR will monitor the Recipient's implementation of the agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

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.

Please be advised that the Recipient may not harass, coerce, intimidate, or discriminate against any individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Naghmeh Ordikhani, Civil Rights Attorney, at 415-486-5588.

Sincerely,

/s/

Kana Yang  
Acting Team Leader

Enclosure