



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

February 27, 2015

Mr. Tom Uslan
Superintendent
Lincoln Unified School District
2010 West Swain Road
Stockton, California 95207

(In reply, please refer to case no. 09-13-1159.)

Dear Superintendent Uslan:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Lincoln Unified School District (District). OCR began an investigation on the following issues:

1. Whether the District failed to provide the Student¹ with a free, appropriate public education (FAPE) by failing to include persons knowledgeable about the Student, including the Student's special education teacher, in the Student's individualized education program (IEP) meetings.
2. Whether the District failed to respond appropriately and effectively to notice that the Student had been subjected to harassment by other students based on disability.
3. Whether the District discriminated against the Student's parent (Mother) based on national origin by failing to provide her with adequate interpretation and translation services to enable her to participate equally in her son's IEP process.
4. Whether the library bathroom at Don Riggio Elementary school is inaccessible to individuals with disabilities.

OCR conducted a preliminary investigation of the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated

¹ OCR notified the District of the identity of the Complainant, Parents, and the Student during the investigation. We are withholding their names from this letter to protect their privacy.

by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department, and is a public school district, and is subject to Section 504, Title II, Title VI, and the regulations.

OCR began the investigative process by gathering information from the Complainant and the District. OCR concluded that there was insufficient evidence to support a conclusion that the District had violated Section 504 with respect to Issue 1. Before OCR had completed its investigation of issues, 2, 3, and 4, the District expressed an interest in entering into a resolution agreement. Under OCR's complaint resolution procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. On February 18, 2015, the District submitted an agreement which, when implemented, will resolve those allegations in this complaint. For this reason, OCR did not complete its investigation or reach findings or conclusions as to whether the District had failed to comply with Section 504, Title II, or Title VI in connection with those allegations.

The applicable legal standards and basis for OCR's resolution are summarized below.

Issue 1: Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to include persons knowledgeable about the Student, including the Student's special education teacher, in the Student's individualized education program (IEP) meetings.

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.

Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must 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, with information from all sources being carefully

considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

OCR determined that the Student's placement was reviewed during eight IEP meetings and IEP addendum meetings that occurred between September 2012 and October 2013. During this period, the Student's parents (Parents) filed for due process with the California Office of Administrative Hearings and participated in mediation, which did not resolve all areas of concern. In September 2013, the Parents and the District reached agreement on the Student's placement.

The Complainant alleged that the District failed to include a special education teacher at the Student's IEP meetings and to ensure all necessary participants were present. The District provided OCR with copies of the meeting notes of each of these IEP meetings, as well as the lists of all attendees present at each meeting. These attendees included, depending on the topics of discussion at a given meeting, general education and special education teachers, administrators, a behaviorist from a non-public agency, the District's speech, language and hearing specialists, and the school psychologist. OCR concluded that the District took adequate steps to ensure that all placement decisions regarding the Student were made by a group of persons who were knowledgeable about the Student, the evaluation data, and the placement options. OCR therefore concluded that there was insufficient evidence to establish noncompliance with the Section 504 regulations in connection with this allegation.

Issue 2: Whether the District failed to respond appropriately and effectively to notice that the Student had been subjected to harassment by other students based on disability.

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. 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 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 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.

The Complainant alleged that the Student was separated from her peers during transition times during the day, such as before school, during line-up for recess or lunch, and during classroom circle time. She alleged that, as a result of this separation, she was subjected to harassment on the basis of her disability. The Student's mother informed OCR that she overheard other students making fun of the Student, and referring to her as "the idiot," while in line for recess. She reported the comments to the school Principal approximately a month after they occurred. The Parents removed her from the site shortly after the mother made this report.

OCR determined that the decision to separate the Student from her peers during transition times was made pursuant to ongoing IEP discussions. However, the District was obliged under Section 504 and Title II to respond adequately to allegations of harassment based on disability. OCR concluded that the resolution agreement described below resolved this issue.

Issue 3: Whether the District discriminated against the Student's Parent based on national origin by failing to provide her with adequate interpretation and translation services to enable her to participate equally in her son's IEP process.

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), provides that recipients of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, provide any service or benefit which is different or provide such service or benefit in a different manner from that provided to others under the program. In determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin" (35 Fed. Reg. 11,595). The memorandum clarified OCR

policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students.

The May 25th memorandum states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. OCR analyzes this issue consistent with the U.S. Department of Justice (DOJ) "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (67 Fed.Reg. 41,455, June 18, 2002). Under the DOJ Guidance, the extent of a recipient's obligation to provide language assistance to limited English proficient (LEP) individuals is determined by balancing four factors: 1) the number or proportion of LEP individuals likely to encounter the program; 2) the frequency with which LEP individuals come in contact with the program; 3) the nature and importance of the services provided by the program; and 4) the resources available to the recipient.

The Parents alleged that the District failed to provide adequate interpretation during IEP meetings to enable the Mother, who is not proficient in English, to participate meaningfully in those meetings. In light of the significance of IEP meetings and other meetings concerning the identification, evaluation, and placement of students with disabilities to students with disabilities, it is important that school districts provide interpretation of all such meetings to limited English proficient parents. To be considered adequate, interpretation should be provided by individuals who have been determined to be proficient in English and the primary language of the parent, and who have received training on the interpretation process and the specialized terms used in IEP meetings.

OCR determined that the resolution agreement described below, when implemented, will fully resolve this issue. OCR therefore did not complete its investigation, and made no findings as to the District's compliance with Title VI in connection with this allegation.

Issue 4: Whether the library bathroom at Don Riggio Elementary school is inaccessible to individuals with disabilities.

The program accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§104.21-104.23; comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§35.149-35.151. Both 34 C.F.R. §104.21 and 28 C.F.R. §35.149 provide that no qualified person with a disability shall, because a school district's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program of activity of the school district.

Section 104.23 of the Section 504 regulations, and section 35.151 of the Title II regulations, are applicable to "new construction or alterations", defined as any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or

January 26, 1992 (Title II), respectively. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the school district shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities.

The Complainant alleged that a restroom located in the building that houses the library at the Don Riggio School was not accessible to individuals with disabilities. OCR determined that construction on the school began in 2000, and that the school is therefore considered "new construction" under Section 504 and Title II. As described below, the District agreed to ensure that the library restroom meets applicable accessibility standards. OCR therefore did not complete its investigation of this allegation and reached no conclusions as to the District's compliance with the accessibility standards of Section 504 and Title II.

Resolution Agreement

Prior to the completion of OCR's investigation allegations 2, 3, and 4, the District expressed an interest in resolving the complaint through a resolution agreement (agreement) pursuant to Section 302 of OCR's Case Processing Manual. OCR determined that it was appropriate to resolve the complaint under this section.

On February 18, 2015, without admitting to any violation of the law, the District signed the enclosed agreement to resolve this case. Pursuant to the agreement, the District will ensure that Limited English Proficient (LEP) parents are provided information that enables them to participate meaningfully in the special education process in a language they understand by a) developing and implementing a plan for oral language assistance; and b) developing and implementing a plan for initial and ongoing training of District staff that provides oral interpretation for parents at SST, IEP and Section 504 meeting. The District will provide mandatory disability harassment investigative training to all school site administrators in the District. The District will also ensure that the restroom in the library at Don Riggio Elementary School is accessible to persons with disabilities. OCR has determined that the implementation of this agreement will resolve the allegations made in this complaint.

Based upon the signed agreement, OCR is closing the investigative phase of this complaint as of the date of this letter. OCR will monitor the implementation of the agreement, and is informing the Complainant by concurrent letter. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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 records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

OCR would like to thank you and your staff for your cooperation in resolving this matter. If you have any questions about this case, please contact Jessica Plitt, Civil Rights Attorney, at (415) 486-5525, or Shilpa Ram, Civil Rights Attorney, at (415) 486-5565.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Ann Sherlock, Esq. and Rebecca Feil, Esq.