



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

September 27, 2017

Dr. Darin Brawley
Superintendent
501 S. Santa Fe Avenue
Compton, California 90220

(In reply, please refer to OCR Docket Number 09-13-1369.)

Dear Superintendent Brawley,

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Compton Unified School District (District). The Complainant alleged that the District discriminated against her son (the Student) on the basis of race and disability.¹ Specifically, OCR investigated the following issues:

1. Whether the Complainant was subjected to harassment by the principal of her son's school on the basis of race or national origin, and the District failed to respond appropriately to notice of the harassment;
2. Whether the District terminated the Student's enrollment at the continuation school on the basis of race or national origin;
3. Whether the District denied the Student a free appropriate public education (FAPE) when it changed his placement without following adequate evaluation and placement procedures, even though it had reason to know he was a person with a disability.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §2000d, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12131 *et. seq.*, and their implementing regulations. Title VI and its implementing regulations prohibit discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial

¹ 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.

assistance and as a public education system, the District is subject to Title VI, Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews with the Complainant, District administrators, and teachers, administrators and staff at XXXXX XXXXXX Continuation High School (the School). OCR also reviewed documents and other information provided by the Complainant and the School. OCR concluded that the District had reason to believe that the Student had a disability, and changed his placement without following adequate evaluation and placement procedures, in violation of Section 504 and Title II. OCR concluded, however, that the District did not subject the Complainant or the Student to discrimination on the basis of race or national origin.

The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Background

The Student was enrolled in the District beginning in elementary school. He was enrolled at the School for portions of the 2012-13 and 2013-14 school years, when he was 16 and 17 years old. The District has informed OCR that he has not enrolled in any District schools since the spring semester of 2014. He was not identified as a student with a disability and, to OCR's knowledge, was never evaluated to determine if he had a disability. The Student and his mother are both Latino.

The School is a continuation school in the District, which serves high school students in need of alternative programs or credit recovery. The principal of the School during the first year of the Student's attendance, who is African American, has not been the School site administrator since September 2013.

***Issue 1:** Whether the Complainant was subjected to harassment by the principal of her son's school on the basis of race or national origin, and the District failed to respond appropriately to notice of the harassment*

Legal Standard

The Title VI regulation, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student or parent based on race, color or national origin can constitute a form of discrimination because it can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be

acting, in the context of carrying out these responsibilities engages in harassing conduct (physical, verbal, graphic, or written) on the basis of race, color or national origin that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, or the parent's ability to participate in his/her student's education, the district is responsible for the discriminatory conduct whether or not it has notice.

Under Title VI and the regulations, if a student or parent is harassed by an employee on the basis of race, color or national origin, the school is responsible for determining what occurred and responding appropriately. 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. If a district's grievance procedures encompass race and national origin discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination.

Facts

The Complainant alleged that, during a discussion with her concerning her son's removal from the School, the School principal informed her that he was "tired of this problematic race," and "tired of these people." She understood that the principal was referring to Latino parents and students. She stated that, during the same conversation, the principal yelled at her and threatened to call the police if she did not leave the school. She did not identify any witnesses to the interaction.

The principal categorically denied having made the alleged remark. He stated that 70% of the school is Latino. He also denied having threatened to call the police to eject her from the school. He stated that the Complainant had been confrontational in her interactions with him, and had, on occasion, used vulgar gestures toward him.

On April XX, 2013, the Complainant called the District office to complain about her interaction with the principal. She did not mention any discussion of race in this report. An unidentified staff member documented the call, and the principal's response to the complaint, on a form entitled "Parent Complaint Form – Detailed Report". The complaint was referred to the principal for response, but there is no evidence that any further follow-up action was taken.

On April XX, 2013, the Complainant called and visited the District office, and spoke to another staff member. According to the document this staff member prepared, the Complainant quoted the principal as saying "I'm so tired of these people." The document indicates that the complaint was referred to the assistant superintendent, the senior director for secondary schools, and the principal. There is no evidence that any action was taken to investigate the complaint.

Analysis and Conclusion

Based on its interviews of the Complainant and the principal, OCR determined that there was insufficient evidence to establish, by a preponderance of the evidence, that the principal made the remarks attributed to him regarding “this problematic race,” or “these people.” There were no witnesses to the alleged remarks, and the principal denied making them.

Because OCR did not find sufficient evidence to conclude that the Complainant was subjected to a racially hostile environment, we did not address the District’s failure to respond to her complaint. However, as part of a subsequent resolution of a separate complaint (OCR case no. 09-15-1227), the District has agreed to revise its procedures for resolving complaints of discrimination and to provide training to staff responsible for processing such complaints.

Issue 2: Whether the District terminated the Student’s enrollment at the continuation school on the basis of race or national origin

Legal Standard

Under the Title VI regulations, at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin,

- (i) deny an individual any service, financial aid or other benefit.
- (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.
- (vi) deny an individual an opportunity to participate, or afford an opportunity to participate which is different from that afforded others.

To determine whether a student has been discriminated against on the basis of race or national origin under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races or national origins under similar circumstances, and whether the treatment has resulted 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 student’s race or national origin.

Facts

The Student was referred to the School from a comprehensive high school in the District in December 2012. According to District records, he was enrolled at the School until April XX, 2013.

The Complainant alleged that the Student failed to turn in a “Tracer” report on April XX, 2013, and that the School principal expelled him from school as a result. She stated that she met with the principal on April XX, 2013, to protest the expulsion. She alleged that the principal yelled at her and told her that he decided who attended the School and that he would not accept the Student at the school. He refused to provide her with paperwork concerning the expulsion.

The former principal informed OCR that a Tracer report is a behavior contract that requires daily reports from each of a student’s teachers. He stated that he remembers talking to the Student and the Complainant about the report but stated that he never kicks students out of school. He stated that he might have referred the Student to the Community Day School. Both the Complainant and the principal stated that the Complainant was not given disciplinary paperwork concerning the Student.

The principal submitted a brief written response to the Complainant’s April XX, 2013, complaint to the District, stating that the Student “refuses to act responsible in and out of the classroom.” In this response, the principal stated that he had recommended that the Student enroll at Community Day for the rest of the year.

The Student’s attendance records show that he did not attend school after April XX, 2013, for the remainder of the 2012-13 school year. The principal stated that, if a student stopped attending school without transferring to another school, the attendance clerk normally sent a letter to the student’s house to determine the reason. There is no record that such a letter was sent to the Complainant. District records show the Student as having withdrawn from the continuation school “to another school in District”. There are no records showing that he attended a different school.

The District Senior Director of Pupil Services informed OCR that students are placed at the Community Day school through a referral process administered by her office. Student transfers among schools would also be administered through the Department of Pupil Services, as are disciplinary actions that result in a student’s disenrollment from a school. She found no records that the Student was referred to the Department of Pupil Services in connection with a disciplinary action, a voluntary or involuntary transfer, or a referral to Community Day School.

OCR determined that the District did not maintain records that would show whether other students were informally removed from the school. The District provided records showing the students who left the school before graduating. “Withdrawn to another school in District”, was the most common explanation for leaving the school, and accounted for approximately half of the students listed. This result is consistent with the District’s stated goal of enabling

continuation school students to make up missing credits and return to their comprehensive high school of residence. Latino students were not overrepresented among students who left the school for that reason.

Analysis and Conclusion

OCR's investigation established that the principal of the School failed to follow District or state guidelines, and took no formal action regarding the student, such as transferring him to a different school, disciplining him, or reporting him for truancy. OCR therefore found that the District effectively removed the Student from the School. Because of the informal and unauthorized nature of the principal's treatment of the Student, it was not possible to determine whether other students were subjected to the same treatment, or whether it was imposed more often on Latino students than on others. In reviewing the records of students who left the school due to being "Withdrawn to another school in the district" as was the Student in this case, OCR found that Latino students were not overrepresented amongst the students who left for that reason. As a result, OCR did not find sufficient evidence to establish that the principal treated the Student differently from similarly situated students who were not Latino, or that he excluded the Student from the School because he was Latino. For these reasons, OCR found insufficient evidence to establish a violation of Title VI in connection with this allegation.

Issue 3: *Whether the District denied the Student a free appropriate public education (FAPE) when it changed his placement without following adequate evaluation and placement procedures, even though it had reason to know he was a person with a disability.*

Legal Standard

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(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are

located, identified, and evaluated for special education and disability-related services. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Facts

The Complainant informed OCR that her son suffered from post-traumatic stress disorder (PTSD). She stated that, in an attempt to find academic help for the Student, she had informed the principal that he had “emotional problems,” including that he was insecure and could not deal with certain problems. She alleged that the principal responded that “that is not my problem,” and that he did not want children with problems. She stated that she did not directly inform the principal that her son had been diagnosed with PTSD.

The principal denied having told the Complainant that he did not want students with problems. He reported that he was unaware that the Student had PTSD, and would have referred him for evaluation if he had known. He stated that he knew the Student had problems, since he was distant and very quiet at times, and sometimes put his head on his desk and refused to participate in class. He stated that any documentation concerning the Student’s medical or emotional condition would be held by a counselor in the Pupil Services Department.

The Complainant informed OCR that she had met with Pupil Services counselor named by the principal, asked for help for her son, and provided the counselor with medical documents showing the Student’s PTSD diagnosis. She stated that she received no response to these documents. OCR interviewed the counselor, who did not specifically remember the Complainant, but informed OCR that, if the Complainant had given her medical papers, she would have told the Complainant to see a medical doctor and get a diagnosis. She stated that she would not have retained medical information, since she had no place to keep it and nothing to do with it. She stated that a Section 504 plan requires a doctor’s diagnosis and the signature of the nurse at the school site. She stated that Section 504 plans are a site function, and that she would have referred the Complainant to the school site.

The principal stated that he believed that one of the Student’s teachers had asked the Complainant to come to school for a Student Study Team (SST) meeting, but that, because she did not come to the school, no meeting took place. The School counselor who coordinated the SST process informed OCR that she had scheduled a meeting for the Student during 2013-14 school year, after he told her that he was not doing well at school because it was hard for him. She stated that a District psychologist came to the meeting, but that the Complainant did not appear and, as a result, no meeting was held.

The Student’s school records indicate that he received failing grades through most of his secondary school career. As early as elementary school, teachers’ end-of-year comments were noting problems with attention and reading comprehension. The student was referred for an SST when he was in seventh grade because of concerns about his low performance. The teacher who referred him noted that he needed individual attention to understand and

complete tasks, and that “he tries but he has trouble comprehending most tasks.” There is no evidence in his cumulative record that an SST meeting was held that year.

An SST meeting was held when the Student was in eighth grade. Recommended interventions included tracer forms, pull out services, after school program and a Saturday academy. The meeting summary recommends a follow-up meeting after two months, but there is no evidence that such a meeting occurred.

OCR interviewed several of the Student’s teachers at the School. Most stated that his skills were far below average. Their observations included the following:

- His score on an initial reading assessment indicated that he read at the equivalent of a first or second grade level.
- He performed well below grade level, and was not passing, and unproductive. Based on his reading scores, he probably had trouble understanding words on a page and the sequential logic required for a high school science class.
- The Student needed an accurate diagnosis of his learning disabilities and mental health status.
- He was quiet, “stoic,” did minimal work, and appeared to have trouble understanding the words on a computer. He displayed “typical” non-reader, non-motivated behavior.
- When he turned in work, it probably was not his own. He needed help with his work and couldn’t do much on his own.
- He couldn’t be given regular assignments; the teacher needed to alter them. He couldn’t do the work that other students did.
- He was notably more uncooperative, rude and disrespectful than most students.

Analysis and Conclusion

Section 104.33 of the regulation implementing Section 504 requires that students with disabilities be given the regular or special education services needed to meet their individual needs as adequately as those of nondisabled students. Section 104.35 requires that a student who, because of disability, needs or is believed to need special education or related services must be evaluated before he or she is placed in an educational program, and before his or her program is significantly changed. Based on these requirements, when a school has reason to believe that a student has a disability and needs special education or related services, it must conduct an evaluation and identify whether the student has a disability and what services he or she requires. Under most circumstances, the school may not change the student’s

placement, including by terminating his/her enrollment, without conducting such an evaluation.

In this case, the evidence establishes that the District had substantial reason to believe that the Student might have a disability that required special education or related services. Several teachers had remarked on his inability to understand instruction or to complete assignments independently. He had a long history of failing grades, and according to reading assessments administered in high school, read at the first or second grade level. He was, in fact, referred to SSTs twice in middle school and once in high school, but no action was taken to follow up on the regular education intervention services recommended for him or to consider whether his poor performance might be the result of a learning disability. When his mother did not attend the SST scheduled for him at the School, no further actions were taken.

The preponderance of the evidence also establishes that the Student's mother brought medical information to the attention of a District office staff member whom the former principal believed was the appropriate person to receive such information. While the staff member did not remember the specific interaction with the Complainant, she informed OCR that she would have rejected the information and informed the parent that she needed to obtain a medical diagnosis from a physician before she could request a Section 504 plan. This information is inconsistent with Section 504. OCR found no evidence that the school was informed of the Complainant's request for assistance or that steps were taken to initiate an evaluation of the student.

OCR concluded that the District violated Section 504 and Title II by failing to evaluate the Student, even though it had reason to believe he might have a disability and need special education or related services. The District also violated Section 504 and Title II by changing his placement by effectively removing him from the School without conducting an evaluation to determine his need for special education or related services.

To address the violations found during the investigation, the District agreed to enter into the enclosed Resolution Agreement (Agreement). The Agreement requires the District to: (1) conduct an assessment of the Student if he re-enrolls in the District prior to his twenty-second birthday and to determine, based on that evaluation, whether he needs special education, related services, and/or compensatory educational services; and (2) provide training to all staff at the School and in the Pupil Services Department on the responsibility of District staff to respond to notice that a student has, or is believed to have, a disability.

Based on the commitments made in the enclosed 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 non-compliance findings in this investigation. OCR will monitor the implementation of the Agreement until the College is in compliance with Section 504/Title II and the implementing regulations.

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, retaliate, 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 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. OCR especially appreciates the assistance provided by Ms. XXXXXXXX XXXXXXXX. If you have any questions regarding this letter, please contact me at Katherine.L.Riggs@ed.gov or (415) 486-5544.

Sincerely,

/s/

Katherine Riggs
Acting Team Leader

Enclosure