



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

May 31, 2018

SENT VIA ELECTRONIC MAIL

Mr. Robert Haley
Superintendent
Cotati-Rohnert Park Unified School District
Robert_Haley@crpusd.org

(In reply, please refer to case no. 09-18-1240.)

Dear Superintendent Haley:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Cotati-Rohnert Park Unified School District (District). The Complainant alleged that the District discriminated against the Student on the basis of disability.¹ Specifically, OCR investigated whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to provide the Complainant with procedural safeguards when it did not give the Complainant an opportunity for an impartial hearing in September 2017.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as an education system, the District is subject to Section 504, Title II, and their implementing regulations.

As described herein, prior to the completion of OCR's investigation, the District agreed to enter into a resolution agreement with OCR which will address and resolve concerns identified by OCR regarding the allegation raised in this complaint. To investigate this complaint, OCR gathered evidence by reviewing documents provided by the Complainant. OCR also interviewed Complainant. The applicable legal standards and the facts gathered by OCR to date are summarized below.

¹ OCR previously provided the District with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Issue: *Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to provide the Complainant with procedural safeguards when it did not give the Complainant an opportunity for an impartial hearing in September 2017.*

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.

Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Facts Gathered to Date

The Student began attending an elementary school (School) in the District during the 2016-2017 school year. The Student was in the fourth grade during the 2016-2017 school year and in the fifth grade during the 2017-2018 school year. The Student transferred to another school district in December 2017. The Complainant is the parent of the Student.

The Student had a Section 504 Plan with the School during the 2016-2017 and 2017-2018 school years and the Section 504 Plan indicates that the Student is a student with a disability.

The Complainant stated the School conducted Section 504 Plan meetings for the Student in October 2016, March 2017 and November 2017. The Complainant stated that during each of these Section 504 Plan meetings, the School did not provide her procedural safeguards.

The Complainant requested, in a September 20, 2017 email to the District Assistant Superintendent a hearing, to review the Student's Section 504 Plan. The District

Assistant Superintendent responded in a September 20, 2017 email to the Complainant that the District does not have a hearing process.

Analysis & Conclusion

OCR is concerned that the District does not have a system of procedural safeguards with respect to any action taken by the District regarding the identification, evaluation, or placement of a student under Section 504. To complete this investigation OCR would have to interview District administrators and review District special education policies and procedures, including the District's Section 504 policies and procedures regarding the evaluation and placement of students with disabilities. OCR would also have to review the Student's Section 504 plan and any communications between the Complainant and District regarding Complainant's requests for a review of the Section 504 plan decision.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving this complaint, and OCR agreed it was appropriate to do so. The District thereafter entered into the enclosed Resolution Agreement. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District complied or failed to comply with Section 504 or Title II with respect to the allegations raised by this complaint.

Through the Resolution Agreement, the District agreed to the following: (i) the District will develop policies and procedures to include a system of procedural safeguards under Section 504 and its implementing regulations; and (ii) the District shall provide training on the Section 504 policies and procedures to District staff responsible for students seeking special education services or accommodations. The District will also provide notice of the policy and procedures and the procedural safeguards to parents with students on Section 504 plans.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Resolution Agreement through completion. The Complainant is being notified by concurrent letter. The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

This concludes OCR's investigative process and 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. 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 a complaint with OCR 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 we 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.

OCR appreciates the courtesy and cooperation extended by you and your staff during the complaint resolution process. If you have any questions, please contact civil rights attorney Genevie Gallegos at (415) 486-5593.

Sincerely,



For Naghmeh Ordikhani
Team Leader

Enclosure

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