UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS, REGION IX

MAR 0 4 2008

[redacted]

(In reply, please refer to case no. 09-06-1482)

Dear [redacted]

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Hermosa Beach City School District (District). The complaint alleged that the District retaliated against you and your son (Student) based on disability and that the District failed to respond to a complaint that you and the Student were being harassed and retaliated against based on disability.

For the retaliation allegation, OCR investigated whether two sets of actions were done in retaliation for your advocacy and protection of the Student's right to obtain a free appropriate public education (FAPE): (1) if false child neglect and abuse reports were made against you to the Department of Children and Family Services (DCFS); and (2) if discipline was imposed on the Student.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA) and their 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 certain public entities. The District receives Department funds, is a public education system, and is, therefore, subject to the requirements of Section 504, Title II, and their regulations.

OCR gathered evidence through interviews with you (hereinafter the Parent), the Parent's attorney, and District staff. OCR also reviewed documents and records submitted by the District, the Parent, and the Parent's attorney.

OCR concluded that the evidence established a violation of Section 504, Title II, and their implementing regulations with respect to the allegations. The facts gathered during the investigation, the applicable legal standards, and the reasons for the determinations are summarized below.

The complainant alleged that after the Parent began actively advocating for the provision of a FAPE for the Student, including opposing the District's educational plans for the Student and retaining counsel to assist with the advocacy and with pursuit of a due process hearing, the District engaged in retaliatory action, including: on April 28, 2006, by filing a false report with DCFS alleging that the Parent was verbally abusive to the Student;[1] on May 5, 2006, by filing a false report with DCFS alleging that the Parent was physically abusive to the Student; and, on May 22, 2006, subjecting the Student to an unwarranted full-day "in school" suspension without properly notifying the Parent. The complaint also alleged that the District failed to respond to a May 15, 2006 letter from the Parent's advocate in which the advocate alleged that harassing and retaliatory acts were being taken against the Parent and Student in response to the assertion of their rights to a FAPE.

The regulations implementing Section 504, specifically 34 C.F.R. §104.61, incorporate the anti-retaliation regulation of Title VI of the Civil Rights Act of 1964, found at 34 C.F.R. §100.7(e), and prohibit the intimidation of, coercion of, or retaliation against individuals because they have engaged in activities protected by Section 504. The Title II regulations similarly prohibit the intimidation of, coercion of, or retaliation against individuals engaging in activities protected by Title II. *See* 28 C.F.R. §35.134.

The Section 504 regulations also require recipients to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. *See* 34 C.F.R. § 104.7(b). The Title II regulations similarly require public entities to adopt and publish prompt and equitable grievance procedures. *See* 28 C.F.R. § 35.107(b). When a school district learns that harassment or retaliation based on disability may have occurred, it must investigate the incident(s) promptly, respond appropriately, and notify the complainant of its determination and appeal procedures.

Findings of Fact

OCR's investigation of this matter revealed the following information:

- The Student was enrolled in the District since kindergarten. Unless otherwise indicated, at all relevant times stated herein, the Student was enrolled in the seventh grade at Hermosa Valley School (School) within the District.

[1] As will be noted further herein, the initial complaint to DCFS only alleged that the Parent was verbally abusive to the Student. However, subsequent to the complaint and during the DCFS investigation of it, additional allegations were made against the Parent including that he kept an unclean home and that he was verbally abusive to District staff.

- Beginning in the second grade, the Student's grades and proficiencies gradually fell and by the spring of 2005, he was not meeting basic minimum requirements for his grade level, particularly in math.

- The School staff undertook efforts to address the Student's learning deficiencies including the convening of student study team (SST) meetings. On October 5, 2005, a SST meeting was held. Members of the team included: the Student's English teacher, physical education teacher, science teacher, social studies teacher, the school psychologist/director of special education, and the school assistant principal.[2] The team recommended that the Student be placed in a Title I math class.

- On November 16, 2005, another SST meeting was held. The same individuals present at the October 5 meeting were present on November 16 along with a tutor for the Student. The team concluded that the Student should have a psycho-educational assessment performed to determine if he qualified for special education services.

- On January 6, 2006, the Parent was notified that an individual education planning (IEP) team meeting would be held for the Student on February 6, 2006.

- On January 26, 2006, the School psychologist completed a psycho-educational report for the Student in order to assist with the determination of whether the Student was eligible for special education services.

- At the February 6, 2006 IEP team meeting, at which the psycho-educational report was considered, the team concluded that the Student was not eligible for special education services. The team members were the School principal, assistant principal, psychologist, and resource specialist.

- On February 8, 2006, the Parent notified the principal and assistant principal that he disagreed with the conclusion of the IEP team. The Parent requested another IEP team meeting be convened to reconsider the determination.

- On February 14, 2006, the IEP team meeting requested by the Parent was held. The team members were the assistant principal, the psychologist, and the resource specialist. The team affirmed the prior decision that the Student was not eligible for special education services but agreed to permit the Student to enroll in the special education math class taught by the resource specialist.

- At the February 14 meeting, the Parent openly questioned the credentials of the resource specialist and also protested the School's prior determinations to

[2]Unless otherwise stated, the Parent was present at each SST meeting and IEP team meeting.

deny him the ability to speak with the Student's Title I math teacher or teaching assistant.[3] During the meeting, the assistant principal became upset with the Parent, walked out of the meeting, and stated to the Parent "I do not want to say something I'll regret later."

- By letter dated March 6, 2006, the Parent notified the District that he disagreed with the IEP team's conclusion and that he would obtain a private assessment of the Student and request reimbursement for the assessment from the District.

- On March 27, 2006, the independent psychologist retained by the Parent completed a psycho-educational report that reached a conclusion contrary to that of the School's psycho-educational report.

- In a facsimile of April 21, 2006, the District was notified that the Parent had retained an advocate/attorney to assist with obtaining special education services for the Student, that the independent psychologist's report was completed, that the Parent would seek reimbursement for its cost from the District, that the District was allegedly in violation of federal laws, and that the Parent was requesting an IEP team meeting within 30 days in order to discuss and consider the independent psychologist's report.

- In a letter dated April 24, 2006, the District proposed three dates for an IEP team meeting and requested that it be advised if the Parent intended to have legal counsel attend the IEP team meeting so that it could arrange to have legal counsel also present. In a letter dated April 28, 2006, the Parent was informed that the IEP team meeting was scheduled for May 18, 2006.

- On either April 26 or April 27, 2006, the IEP team member who subsequently made the first report to DCFS (the first reporter) met with the assistant principal to discuss the possibility of making a report concerning the Parent to DCFS.

- On April 28, 2006, the first reporter made a report to DCFS in which it was alleged that the Parent was verbally abusive to the Student.
- DCFS investigated the April 28 report including conducting on site interviews of District staff[4] at the School. During the interviews, the first reporter made

[3]The Parent made other requests to speak with the individual including on 2/9/06, 2/10/06, 2/11/06, 2/17/06, and 3/27/06. The requests were made to the individual, the assistant principal, the principal, and the Superintendent. The Parent and the District dispute whether the individual was a teacher or a teaching assistant. Resolution of the dispute is not necessary for purposes of OCR's findings.

[4]The term "District staff" is intended to include all employees of the District whether they work in the District administration or at the School site.

two additional allegations against the Parent: (1) that the Parent kept an unclean home; and (2) that the Parent was verbally abusive with staff.

- With the exception of the Superintendent's visit to the Parent's home on November 30, 2004, no member of the District's staff had ever been inside the Parent's home. The Superintendent, when advised of the allegation that the Parent's home was unclean, informed DCFS that, to her knowledge, the home was not unclean but she did not know what knowledge, if any, the first reporter may have regarding the issue.

- In a letter dated June 8, 2006, DCFS informed the Parent that the April 28 report was closed and that the reason for the closure was "that the allegation of child abuse or neglect was either inconclusive or unfounded."[5]

- On May 4, 2006, the Parent signed and returned the April 28, 2006 notification of the May 18, 2006 IEP team meeting and indicated on it that he intended to have an advocate attend the meeting with him.

- On May 5, 2006, another member of the IEP team (the second reporter), based on observations of the Student, made a report to DCFS in which it was alleged that the Student was the victim of physical abuse.

- On May 5, 2006, prior to making the report, the second reporter spoke with the assistant principal and principal about the observations and sought their advice regarding whether to make a report to DCFS. During the meeting, the second reporter was advised that a prior report, that of April 28, 2006, had been made to DCFS against the Parent.

- On May 5, 2006, at approximately 10:15 p.m., a representative of DCFS and an uniformed police officer arrived at the Parent's home to investigate the report made earlier that day. The Parent was required to wake the Student and his older sibling from sleep so that they could be examined for signs of physical abuse.[6] No signs of physical abuse were found and DCFS determined it was unnecessary to interview the second reporter about the alleged physical abuse.

---

[5]OCR notes that "inconclusive" and "unfounded" are inconsistent with one another. *See* California Penal Code § 11165.12. However, the ultimate determination of DCFS does not affect OCR's findings in this matter since, under either standard, the report was not substantiated.

[6]For both reports of alleged abuse, DCFS representatives subjected the Parent and his family to additional interviews, examinations, and visits. In not detailing these additional actions by DCFS, OCR does not intend to minimize or otherwise diminish the significance and impact of them and has excluded them only because they are unnecessary for purposes of reaching findings in this matter.

- In a letter dated June 30, 2006, DCFS informed the Parent that the May 5 report was closed and that the reason for the closure was "that the allegation of child abuse or neglect was either inconclusive or unfounded."

- In a May 15, 2006 facsimile letter to the Superintendent, the Parent's advocate advised of instances of adverse action being taken against the Parent for his advocacy and assertion of the Student's rights under Section 504 (e.g., false reports to DCFS). The letter stated claims of retaliation and harassment and advised the District that a complaint would be filed with OCR.

- The District did not investigate the allegations stated in the May 15 letter or respond in any way. The Superintendent explained that she believed that the letter was not intended to be addressed to her in an "official" capacity but rather in a "personal" capacity. She also believed that the issues stated therein were being addressed through the due process hearing that was ongoing at the time.

- On May 16, 2006, the Parent's advocate notified the School psychologist/director of special education that the advocate would attend the May 18, 2006 IEP team meeting and the advocate also provided a copy of the independent psychologist's report.

- On May 16, 2006, the resource specialist referred the Student to the office for allegedly punching another student. The assistant principal assigned the Student to Saturday school on May 20, 2006 for the incident and also added an allegation that the Student did not follow the directives of the resource specialist when told to report to the office.[7]

- On May 16, 2006, when the Student returned home with the Saturday school form, the Parent e-mailed the assistant principal regarding the matter. The e-mail stated:

> [Assistant principal], supposely [sic] [the Student] spent a considerable amount of his time today with you. Can you give me a full explanation of this matter. I will have it reviewed and the District will receive a [sic] appropriate response. Thank you in advance for your time in this matter.

- On May 18, 2006, the IEP team meeting was held and the independent psychologist's report was presented and discussed. The Parent, advocate, and independent psychologist questioned the previous determination that the Student was not eligible for special education services and requested that the

---

[7] The "Notice of Saturday School" stated as the basis: "[The Student] was punching another student. [The resource specialist] asked him to go to the office. [The Student] sat in the MPR instead until he was brought to the office."

previous decision be reconsidered and the Student be found eligible for services. The team did not change its initial decision. Members of the team from the District were the School principal, psychologist, resource specialist, speech and language pathologist, social sciences teacher, and English teacher.[8] The District did not take steps to review its choice of participants in light of the outstanding allegations of retaliation occurring in the middle of contested IEP proceedings.

- On May 23, 2006, the Parent provided written notice to the District of his disagreement with the conclusions of the May 18 IEP team meeting and of his intent to seek a due process hearing.

- On May 19, 2006, at 12:42 p.m., the assistant principal responded to the Parent's May 16 e-mail. The response stated: "[Parent] – Documentation of the incident is provided on the Saturday school slip. [Assistant Principal]."

- The assistant principal informed OCR that the response to the Parent's e-mail was appropriate and that it was not sent until three days later because the Parent's request was "unreasonable."

- On the afternoon of May 19, 2006, consistent with the School's policy and practice, the School's administrative assistant/clerk made phone calls to the parents of the students expected to be at Saturday school the following day. According to the assistant, the assistant principal prepared and provided the list of parents to call. The Parent was not on the list and was not called. Neither the assistant nor the assistant principal could remember why the Parent was not on the list and no copy of the list is retained after the parents are called.

- The Parent did not send the Student to the May 20 Saturday school and informed OCR that he did not do so because he did not receive a response to his request for information and because he did not receive the Friday telephone notice of Saturday school.

- On Monday, May 22, 2006, due to his failure to attend the Saturday school, the assistant principal suspended the Student for one day for an alleged violation of Education Code § 48900(k), willful defiance of valid authority. The suspension was an "in school" suspension meaning that the Student served it at the school but outside of his regular classes and schedule.

---

[8] The notes of the meeting indicate that the speech and language pathologist departed the meeting early but they do not indicate whether the departure occurred before or after the team's vote to reaffirm its previous decision.

- Prior to imposing the suspension, the assistant principal did not conduct any investigation, provide any notice to the Parent, or attempt to obtain from the Parent any reason for the Student's failure to attend the Saturday school despite having knowledge that the Student's failure to attend was entirely due to the actions of the Parent, who, at the time, had a suspicion that he and the Student were being subjected to retaliation by the District.

- On May 22, 2006, at 9:11 a.m., the assistant principal left a voice-mail message for the Parent asking that he return the call. The assistant principal provided no further information.

- On May 22, at 10:10 a.m., the Parent returned the message but was told that the assistant principal was in a meeting. He thus left a message on the assistant principal's voice-mail.

- On May 23, 2006, the assistant principal returned the Parent's message. The assistant principal stated that other work and business for the entirety of the day on May 22 prevented the Parent from receiving a return phone call that day. By this time, the Parent already found out about the suspension of the Student when the Student returned home from school the previous day and the Student had served the discipline.

- On May 24, 2006, the School mailed to the Parent the written notice of the Student's suspension and the Parent received it on May 25, 2006. The suspension form is blank in the area where the administration is to document that it contacted the Parent to notify of the suspension on the day that it was imposed.

- Pursuant to the School's Saturday school guidelines, a failure of a student to attend Saturday school "will. . .result in home suspension." The Student, however, did not receive home suspension but instead was given what the District refers to as "in school" suspension. "In school" suspension is titled "supervised suspension classroom" in the California Education Code (EC).

- Section 48911.1 of the EC permits a principal to convert home suspension to supervised suspension classroom if the reason for the suspension is one of several acts including willfully defied valid authority.

- A home suspension, pursuant to EC § 48911(d), only requires a reasonable effort to notify a parent at the time of the suspension:

> At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

- A supervised suspension classroom, however, pursuant to EC § 48911.1(d), requires that the notification to the parent must actually take place at the time of the suspension:

> At the time a pupil is assigned to a supervised suspension classroom, a school employee shall notify, in person or by telephone, the pupil's parent or guardian. Whenever a pupil is assigned to a supervised suspension classroom for longer than one class period, a school employee shall notify, in writing, the pupil's parent or guardian.

- On June 16, 2006, the Parent filed a request for a due process hearing with the California Office of Administrative Hearings.

Analysis and Conclusions

A. Retaliation

To find a violation of Section 504 or Title II based on an allegation of retaliation in response to activity protected by the laws, sufficient evidence must exist to first establish a prima facie case of retaliation. A prima facie case consists of: (1) an individual engaged in protected activity; (2) adverse action was taken against the individual or another person whose adverse treatment would impact the individual (such as a child or spouse of the individual); and (3) there is causal relationship between the protected activity and the adverse action(s).[9]

If the prima facie case is established, the District must then provide or articulate a legitimate and non-retaliatory justification for its actions. If such a justification is provided, then the prima facie case drops from the equation and it must then be shown that it was more likely than not that the adverse actions were a response to knowledge of the protected activity for the purpose of extinguishing or discouraging future protected activity. Refuting or otherwise disproving the stated justifications accomplishes this.

Absent direct evidence of retaliation, which is the case in this matter, the method of refuting the proffered justifications is through the use of circumstantial evidence that generally shows that the justifications provided are pretext, untrue, or not justifications that actually motivated the actions at the time they were taken.

---

[9]While some legal authorities require establishment of a fourth element, knowledge of the protected activity, the majority and correct view is that knowledge is included as part of the causation element.

1. The Prima Facie Case

As explained below, the facts in this matter establish a prima facie case of retaliation against the Parent and the Student.

(a) Protected Activity

In general, Section 504 and Title II of the ADA prohibit retaliation against those who have engaged in protected activity. Protected activity is activity that either opposes an act or policy that is unlawful pursuant to Section 504 or Title II (referred to as "opposition clause" matters) or involves the filing of a complaint or participation in an investigative process under Section 504 or Title II (referred to as "participation clause" matters).

Opposition clause activity is considered protected if the individual engaged in the activity has communicated, explicitly or implicitly, a belief that the act or policy complained of is discriminatory. The act or policy that the individual is opposing does not have to be directed at the individual and the individual's opposition can be on the behalf of another individual.

In this matter, the Parent and the Parent's advocate engaged in protected activity when they pursued the Student's educational rights and opposed, appealed, or otherwise contested the District's determinations regarding the Student's eligibility for special education.

(b) Adverse Action

For purposes of determining adverse action in the context of retaliation, OCR utilizes the "reasonably likely to deter" standard. For an action to be considered adverse, OCR generally determines whether the adverse action caused lasting and tangible harm or had a deterrent effect. Mere unpleasant or transient incidents usually are not considered adverse.

Under this standard, the two reports to DCFS, with their foreseeable consequences including nighttime home visits, and the discipline of the Student are adverse actions. It is reasonable to presume that an individual would not likely engage in protected activity if that individual knew that a report to DCFS or the imposition of discipline upon his or her child would result from such activity.

(c) Causation

An adverse action can be considered retaliatory if an individual's protected activity was a factor in it. OCR initially infers a causal connection in cases in which the adverse action occurs in close proximity in time with the protected activity.

Other indicia of causation can include a change in the treatment of the individual before and after the occurrence of the protected activity and a failure to follow or deviation from established practice or procedure.

Finally, as previously stated, the individual taking or influencing the adverse action must have known of the protected activity at the time of his or her action.

OCR determined that sufficient proof of causation is found in this matter due to the close proximity in time between all of the adverse actions and the protected activity and the failure to follow established procedures in disciplining the Student.

Over a period of approximately 8 months, from October 2005 through May 2006, the Parent or one of the advocates retained by the Parent engaged in multiple acts or actions that OCR has determined were protected by Section 504 or Title II. Knowledge of these protected activities by District staff is established by the nature of the actions, the documents associated with the actions, and the intended recipient(s) or audience(s) of the actions. Additionally, knowledge of the vast majority of the protected activities was acknowledged to OCR during its interviews of the individuals involved. Nothing was presented to OCR that would indicate that any of the District staff responsible for each of the previously identified adverse actions was unaware of all of the protected activities.

Viewing the timing of the protected activity in relation to the acts of adverse action, the proximity in time of the adverse actions to the protected activity ranges anywhere from the same day as the protected activity to, at most, seven months subsequent to the protected activity. In particular, OCR noted that the only claims filed with DCFS were commenced in the middle of a strongly contested IEP process by individuals who were participants in the process.

Additionally, causation can initially be inferred in the discipline of the Student due to the assistant principal's failure to follow the well-established procedures of the District and State law prior to imposing the discipline. Specifically, the Parent did not receive the required and standard telephonic notification of the Saturday school, no investigation was performed to determine the Parent's reason(s) for not permitting the Student to attend the Saturday school, and no notification of the suspension was timely given to the Parent as mandated by State law. The District's failure to take its usual steps is particularly problematic given the Parent's belief, at the time, that the District subjected him and the Student to retaliation.

2. Legitimate Non-Retaliatory Justifications

In order to address the prima facie case of retaliation, the District must state legitimate and non-retaliatory reasons for each of the adverse actions that were

taken. The District provided such reasons to OCR for some, but not all, of the adverse actions taken against the Parent or Student.

The District provided a non-retaliatory justification for the initial report to DCFS – the first reporter's concerns for the Student's well being. However, the District did not provide a legitimate non-retaliatory justification for the additional allegations that were made against the Parent when DCFS began its investigation of the report. As previously noted, the additional allegations were that the Parent's home was unclean and that the Parent was verbally abusive to staff.

Over a period of several months, OCR attempted to obtain from the District a legitimate and non-retaliatory reason for the additional allegations being made to DCFS by the first reporter. During that time, the only reliable information OCR was able to obtain from the District was the fact that the additional allegations were indeed made by the first reporter, that the first reporter had never been to the Parent's home, that the first reporter lacked any personal knowledge of the veracity of the additional allegations, and that some communication occurred between the first reporter and the assistant principal with regard to the additional allegations before they were made to DCFS. Beyond these basic foundational facts, OCR was never provided with any further reliable specifics or details about the reasons for the additional allegations.

On several occasions, OCR interviewed the District personnel involved with the additional allegations or those who had knowledge of the additional allegations. The information obtained by OCR during these interviews was speculative, contradictory, and lacking in detail or reliability.

The burden to provide a legitimate and non-retaliatory justification for the additional allegations in the first report to DCFS rested with the District and its inability to provide such to OCR has led OCR to determine that the District failed to provide a legitimate and non-retaliatory justification for the additional allegations made in the first report to DCFS.

Because of OCR's conclusions regarding the first report to DCFS, it is unnecessary for it to reach any determination regarding the second report to DCFS. Resolution of the disputed motivation behind the second report would not change the conclusion that retaliation occurred nor would it change the nature or terms of the District's agreement to resolve this matter.

As such, the remainder of OCR's analysis and conclusions relate solely to the remaining allegations that the suspension of the Student was retaliation and that the District failed to address the complaint of retaliation and harassment submitted by the Parent's advocate/attorney.

The District stated that the discipline of the Student was based on the failure of the Student to attend the Saturday school as required. This provides a non-retaliatory justification for the action sufficient to require an analysis of whether the justification is or is not a pretext for retaliation.

3. Examination of the Stated Justification

The stated non-retaliatory justification for the discipline of the Student may be refuted only by showing that it is pretext – that is, that it is unworthy of credence, untrue, or did not actually motivate the assistant principal to take the action at the time that she did.

The failure to follow established policy and the failure to adhere to mandated requirements when subjecting an individual to an adverse action is indicia of pretext and may be sufficient, in some circumstances, to rebut an asserted legitimate and non-retaliatory justification for the adverse action.

As previously stated in the findings of fact and in the causation section of the retaliation analysis herein, the assistant principal failed to follow established procedures, routine practice, how similarly situated students were treated, and State law when the Student was disciplined for the failure to attend Saturday school.

Moreover, the assistant principal, at the time of imposing the discipline on the Student, knew that the reason that the Student had not attended the Saturday school was because of the Parent's refusal to allow him to attend. The decision, thus, was not that of the Student but rather the Parent and the imposition of discipline on the Student was for the actions of the Parent.

By failing to notify the Parent prior to or simultaneous with the imposition of the suspension, the assistant principal deprived the Parent of his right to contest the alleged misconduct and possibly prevent the imposition of retaliatory discipline against the Student.

No explanation was provided to OCR for the failure to follow and adhere to recognized and mandated policies and procedures. OCR does not condone a student's disruptions, misbehavior, or willful disobedience of authority. However, in this matter, the Student was sanctioned for the actions of the Parent. Moreover, these actions were taken by the Parent to ensure that his suspicion that he and/or the Student were being subjected to retaliation was or was not well founded. Under the circumstances, the Parent's predicate inquiry was not unreasonable. As such, OCR concludes that the imposition of discipline on the Student was done in retaliation for the Parent's protected activities.

B. Failure to Address or Respond to May 15, 2006 Letter

The District did not conduct an adequate investigation of the allegations of harassment and retaliation stated in the May 15, 2006 letter from the Parent's advocate nor did it provide a response to the letter.

Although the District stated that it believed that the May 15 letter was being addressed in the due process hearing proceeding, OCR noted that the Parent did not make a request for any due process hearing until June 16, 2006, a full month after the District received the letter.

The failure to investigate and respond to the May 15 letter is inconsistent with the requirements of Section 504 and Title II of the ADA. As previously stated, 34 C.F.R. § 104.7(b), implementing the grievance procedures of Section 504, and 28 C.F.R. § 35.107(b), implementing the grievance procedures of Title II of the ADA, require the District to investigate, respond to, and provide an appeal process for complaints of disability discrimination. Grievance procedures set out a system for resolving complaints of disability discrimination in a prompt and fair manner.[10]

Based on the evidence that the District did not investigate nor respond to the allegations in the May 15 letter, OCR concluded that the District was in violation of Section 504 and Title II of the ADA.

The District has not admitted any violation of the law and has contested a number of OCR's conclusions. Nonetheless, through its counsel, the District has worked constructively with OCR to agree upon the enclosed Resolution Agreement to resolve the compliance issues in this case. The Resolution Agreement provides that the District will revise and distribute its Notice of Nondiscrimination that states the District's commitment to not discriminate on any basis prohibited by Federal law, will circulate and reemphasize its commitment to prohibit retaliation against those engaging in civil rights related protected activity, and will revise and distribute its uniform complaint procedures that states clearly that they apply to allegations of unlawful discrimination under Federal law.

---

[10]The U.S. Department of Justice recommends that the grievance process include:

- a description of how and where a complaint under Title II may be filed with the government entity;
- if a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative;
- a description of the time frames and processes to be followed by the complainant and the government entity;
- information on how to appeal an adverse decision; and,
- a statement of how long complaint files will be retained.

Additionally, the District will provide nondiscrimination and retaliation training to the staff and administration at Hermosa Valley School.

Because the Student is no longer enrolled in the District and any individual remedies that could be provided to the Student were previously agreed upon by the Parent and the District in the settlement of a related due process proceeding, no further individual remedies for the Student are required by the Resolution Agreement.

OCR concludes that the actions agreed to by the District in the enclosed Resolution Agreement will resolve the compliance issues in this case. OCR will monitor the implementation of the Agreement and is informing the District of these findings by concurrent letter.

OCR thanks you for your assistance and patience in resolving this matter. If you have any questions about this letter, please call Alan Konig, Civil Rights Attorney, at (415) 486-5527 or me at (415) 486-5566.

Sincerely,

James M. Wood
Team Leader

Enclosure

cc: N Jane DuBovy, Esq.