



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS, REGION IX

MAR 04 2008

[REDACTED]
[REDACTED]
[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.

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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.

¹As 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

²Unless 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 staff⁴ at the School. During the interviews, the first reporter made

³The 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.

⁴The 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.

⁵OCR 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.

⁶For 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], supposedly [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

⁷The “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.

⁸The 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.

