



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

December 20, 2013

Dr. John Nickerson  
Superintendent  
Acalanes Union High School District  
1212 Pleasant Hill Road  
Lafayette, California 94549

(In reply, please refer to 09-13-1192.)

Dear Superintendent Nickerson:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its consideration of the above-referenced complaint against the Acalanes Union High School District (District). The complaint alleged discrimination on the basis of disability. OCR commenced investigation into the following issues:

- The Recipient failed to provide the Student<sup>1</sup> with a free, appropriate public education (FAPE) by failing to follow adequate procedures for evaluation and placement of the Student and by failing to implement the Student's Section 504 plan.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

The Section 504 regulations at 34 C.F.R. §104.35(a) require 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. 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. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so,

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<sup>1</sup> OCR provided the District with the name of the Complainant and Student in our April 12, 2013 notification letter. Therefore, OCR has not included the Complainant or Student's identities in this letter.

what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

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.

As part of its investigation, OCR reviewed documents and records submitted by the District and the Complainant, and also interviewed the Complainant and some District personnel. During the investigation, OCR learned the following facts:

- The Student was a XXXXXXXX in the District during the 2009-2010 school year.
- Before she entered the District, the Student had two head injuries resulting in concussions while playing XXXXXX school sports.
- Around the time when she entered the District in the Fall of 2009, the Student submitted to the District the "Acalanes Union High School District: Medical Referral Form for Modified or Adapted Physical Education," which was filled out and signed by her physician, and dated July XX, 2009. On the form, the physician identified the diagnosis as "concussion, head trauma, migraines," and noted that no contact sports are allowed.
- No evaluation was conducted of the Student, nor was any meeting conducted such as a Student Study Team (SST), Section 504 team, or Individualized Education Program (IEP) team, about whether the Student needed accommodations in response to the Medical Referral Form.
- During her XXXXXXXX year, the Student had numerous absences from school due to ongoing complications from her previous head injuries.
- On March X, 2010 (spring of the Student's XXXXXXXX year), the District sent the Complainant an "Excessive Excused Notice" related to the Student's absences. The letter explained that the Student "has now reached 15 or more excused absences in one or more periods since the beginning of the year." It then noted that "After 15 excused absences, you will be required to provide verification from your child's

physician to clear additional absences.” The Complainant confirmed that, in response, she provided the District documentation for the Student’s absences.

- No evaluation of the Student was conducted, nor was any meeting conducted such as a SST, Section 504 team, or IEP team, about whether the Student needed accommodations based on the documentation the District received from the Complainant in response to the District’s “Excessive Excused Notice”
- Around the time that the Student began her XXXXXXXXX year in 2010, the Complainant submitted to the District an “Acalanes Union High School District Health Information Form”, dated July XX, 2010. The Complainant checked the boxes on the form for “Headache-severe/Migraine,” “Medication prescribed,” “Physical activity limitations,” and “History of serious injury.” On the second page, the Complainant explained that the Student took medication for migraines, had two concussions and had fractured her back, and had physical limitations and wrote “See MD Note Attached.” The attached note from the Student’s doctors indicated that because of her back injuries and history of concussions, she could not participate in contact sports as well as some other sports.
- No evaluation was conducted, nor was a meeting held such as SST, 504, or IEP, about whether the Student needed accommodations in response to the information on the health form that the Complainant submitted at the beginning of the Student’s XXXXXXXXX year.
- On April XX, 2011, the Student’s doctor wrote to the school counselor and explained that she was treating the Student for XXXXXXXXXX and recommended that the Student receive a Section 504 plan.
- On May X, 2011, only a few days after the letter, the District convened an initial Section 504 meeting for the student. The Section 504 team concluded that the Student had a disability and crafted a Section 504 plan that included numerous accommodations.
- The accommodations in the Student’s Section 504 plan included a provision whereby she could receive extensions on assignments and postponements on tests when necessary because of her disability.
- The accommodations in the Student’s May 2011 Section 504 plan remained in place through her entire XXXXXX year of XXXX school.
- In early September 2012 (Fall of the Student’s XXXXXX year), a dispute arose about whether the Student would be able to postpone an Advanced Placement (AP) XXXXXXXX test due to her migraine headaches. The Student was ultimately only permitted to postpone that test for one day despite the fact that she indicated that

she needed more time due to the severity of her migraines. The Student reported she struggled on the test.

- On September XX, 2012, a new Section 504 meeting was held for the Student. At that meeting, the accommodation allowing for the postponement of tests was narrowed to only require teachers to grant the Student a one day postponement on tests. The Complainant protested this change and the detrimental effect she believed it would have on the Student because of her disability.
- In late September or early October, the Student was only given a one day extension on another AP XXXXXXXX test and struggled on the test.
- On October X, 2012, the Student dropped her AP XXXXXXXX class.
- In the Fall of 2012, the Student earned As and Bs in her other classes, including other AP classes. The Complainant told OCR that the other teachers were not rigidly applying the changed accommodation of only granting one day extensions on tests.

Prior to the completion of OCR's investigation and reaching conclusions of law, the District expressed an interest in resolving the complaint. Pursuant to Section 302 of the OCR Case Processing Manual, OCR has the authority to resolve complaints by means of a resolution agreement before the conclusion of the investigation when the recipient expresses an interest in such a resolution. On December 12, 2013, the District signed the enclosed Resolution Agreement (Agreement) which addresses the compliance concerns at issue.

OCR concluded that implementation of the Agreement will resolve the issues raised in this complaint. Thus, OCR is closing the investigative phase of this complaint as of the date of this letter. We are concurrently advising the Complainant of this resolution. OCR will monitor the implementation of the Agreement.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and other participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank you and your staff, and particularly XXXXXX XXXXXXXXXXXXX and XXXXX XXXXXX, for your cooperation and assistance with this matter. If you have any questions please contact Yohance Edwards, OCR Attorney, at (415) 486-5585 or Carolyn Wade, OCR Investigator at (415) 486-5563.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure