



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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SAN FRANCISCO, CA 94102

February 6, 2017

Pat Kelley  
Superintendent  
Murrieta Valley Unified School District  
41870 McAlby Court  
Murrieta, CA 92562

(In reply, please refer to case no. 09-16-1281.)

Dear Superintendent Kelley:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against Murrieta Valley Unified School District (the District). OCR investigated whether the District discriminated against students with visual impairments when it failed to provide auxiliary aids or accommodations that would have allowed these students to take the PSAT examination on February 22, 2016.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation. Section 504 prohibits discrimination on the basis of disability 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 (Title II), as amended, 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, Title II, and the regulations.

To investigate this complaint, OCR interviewed the Complainant (who was the parent of a student with a visual impairment), ten counselors and case managers at District high schools, and the Principal of one of the District's high schools. OCR also reviewed all of the documents and other information provided by the Complainant and the District. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the reasons for OCR's determination.

### **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. 34 C.F.R. §104.33(b)(2). 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.

Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iii), school districts, in providing any aid, benefit or service, also may not deny a qualified person with a disability an opportunity to participate, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others, or provide a qualified person with a disability with an aid, benefit or service that is not as effective as that provided to others.

When a District knows that a student needs assistance with communication because, for example, he or she has a hearing, vision, or speech disability, they have an affirmative obligation to provide effective communication under Title II.<sup>1</sup> Under Title II, districts must provide appropriate “auxiliary aids and services” where necessary to provide effective communication;<sup>2</sup> that is, schools must provide appropriate auxiliary aids and services so that students with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the public school district. Title II requires covered entities, including public schools, to give “primary consideration” to the auxiliary aid or service requested by the student with the disability when determining what is appropriate for that student.<sup>3</sup>

The Title II regulations require that when a public school is providing auxiliary aids and services that are necessary to ensure equally effective communication, they must be provided in “accessible formats, in a timely manner, and in such a way as to protect the privacy and independence” of a student with a disability.<sup>4</sup> The auxiliary aid or service provided must permit the person with the disability to access the information. For example, if a blind student is not able to read Braille, then provision of written material in Braille would not be accessible for that student. For the auxiliary aid to be provided in a timely manner, it means that once the student has indicated a need for an auxiliary aid or service or requested a particular auxiliary aid or service, the public school district must provide it as soon as possible. If the student is waiting for the auxiliary aid or service, districts should keep the student (and parent) informed of when the auxiliary aid or service will be provided. This requirement is separate from the provision of special education and related services under the IDEA.

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<sup>1</sup> 28 C.F.R. § 35.160 (a)(1) provides “ A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”

<sup>2</sup> 28 C.F.R. § 35.160(b)(1).

<sup>3</sup> 28 C.F.R. § 35.160(b)(2).

<sup>4</sup> 28 C.F.R. § 35.160(b)(2).

## **Findings of Fact**

### **Background and Overview**

- The College Board is a non-profit organization that administers the PSAT and the SAT for high school students. The College Board web site describes opportunities to take the PSAT as “great practice for the SAT because they test the same skills and knowledge as the SAT — in a way that makes sense for your grade level” and also helpful because they “provide score reports you can use to personalize” your preparation for the SAT. Students often take the PSAT in tenth grade as preparation for the 11th grade version of the PSAT, which is used to determine which students receive awards and scholarships through the National Merit Scholarship Program.
- The District offered all tenth grade students the opportunity to take the PSAT examination free of charge at District facilities on February 22, 2016.
- The February 2016 administration was the first year that the PSAT was offered to all District tenth graders. In previous years, tenth grade students could sign up for the PSAT on their own, but it was not a benefit that was provided for every student in the District.
- For students with disabilities that require accommodation, the College Board requires approval of the accommodations before accommodations can be provided, and requests that school districts apply for accommodations on behalf of their students. In this regard, a page on the College Board’s web site informs parents that most accommodations are approved through the school, and includes a page entitled “Top Five Reasons to Work with Your School,” which explains why requests from the school are preferable to requests directly from parents.<sup>5</sup> For the February 22, 2016 administration of the PSAT, the deadline to submit a request for accommodation was December 15, 2015.
- The College Board approves specific accommodations for each student. According to the College Board’s web site, for students with vision impairments, potential accommodations include a braille version of the test, a large-print version of the test, an audio version of the test, extended time, a reader, a scribe, and a magnifier. According to the web site, if the College Board does not provide approval of accommodations in advance, or if the accommodations provided are different than what was approved, the student’s test scores are cancelled.
- On January 28, 2016, the District sent a letter home to all tenth grade parents that encouraged all students to take the PSAT, and described it as a way to “provide an update on student progress and pinpoint[] areas for development” and noted that it would provide “students, parents, and staff with valuable

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<sup>5</sup> See <https://www.collegeboard.org/students-with-disabilities/reasons-work-with-school>

feedback to support student growth.” The letter told parents that “if you would prefer for your student not to take the exam this year, please contact your student’s guidance counselor to request an ‘opt out’ form.”

- The January 28, 2016 letter did not include any information on how to request accommodations needed for the PSAT for students with disabilities.
- The PSAT was a topic on the agenda for the District’s counselors’ meetings on December 3, 2015 and February 4, 2016. The District provided a statement to OCR from a District Counselor on Special Assignment (COSA), which said that at the December 3, 2015 meeting, the COSA reminded counselors of their responsibility to ensure that all students with disabilities scheduled to take the PSAT received appropriate accommodations, and that the District reviewed the process of obtaining approval of accommodations and modifications through the College Board. OCR spoke to six counselors at three high schools in the District, and none remembered receiving any training about how to request accommodations, or the deadline for doing so, at this meeting or otherwise.
- According to District records, during the 2015-16 school year, there were six tenth grade students with vision impairments. Those students attended three high schools, Murrieta Valley High, Vista Murrieta High, and Tenaja Canyon Academy.<sup>6</sup> Three of the six students with vision impairments did not take the PSAT in February 2016. The other three students took the test, but did not receive approval for the accommodations that they were provided. Details about each student are included below.
- OCR interviewed counselors, case managers, the PSAT Coordinator, and the SSD (Students for Services with Disabilities) Coordinator at each of the three high schools. Staff consistently reported that because the PSAT was new during the 2015-16 school year, there was not a clear process for requesting accommodations.

### February 2016 PSAT

#### *Student A (Murrieta Valley High and Tenaja Canyon Academy)*

- Student A attended Murrieta Valley High for her freshman year and for the beginning of her sophomore year. Due to health issues, she moved to an independent study program at Tenaja Canyon Academy during her sophomore year, on or about October 2015.
- Student A is a qualified student with a disability and has an Individual Education Program (IEP). She has stickler syndrome, retinal detachments, low interocular

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<sup>6</sup> In the 2016-17 school year, Tenaja Canyon merged with Creekside High School and is now called Murrieta Canyon Academy.

pressure and interocular bleeding. Pursuant to Student A's IEP, she requires a Braille copy of all tests and additional time. The District has provided those accommodations for tests other than the PSAT.

- At Student A's IEP meeting at the end of her freshman year, the Student's IEP team told the Student's mother that she needed to get in contact with the College Board. The Student's mother went to the College Board's web site, which directed her to have the Student's school district request the accommodations. The Student's mother therefore requested that her child's physician draft a letter detailing her disability, which was provided to the Student's mother by the doctor on July 27, 2015.
- The Student's mother told OCR that on October 6, 2015, the day of the student's IEP meeting during the fall of her sophomore year, Student A's case manager requested that she send the physician's letter to the Student's case manager. Both the Tenaja Canyon Principal and Student A's case manager told OCR they did not have any recollection of discussing accommodations for the College Board at that IEP meeting. However, OCR reviewed a copy of an email from Student A's mother to the case manager on October 6, 2015 that attached the letter from Student A's physician. The subject of the email was "[Student] Exam Letter.docx" and the text of the email was "College Board[] letter"; the letter was attached. When asked by OCR, the student's case manager said she did not remember the email but probably would have provided it to the PSAT coordinator at the school. The PSAT Coordinator denied receiving any documentation about the student's disability to provide to the College Board.
- The Student's mother told OCR that she was later asked to provide the school with a consent form to give the school permission to communicate her daughter's disability information to the College Board, which the Student's mother signed and sent back. She could not remember the specific date when the request to provide the consent form was made by the school.
- The Student's mother told OCR that both Student A's case manager and the Principal told her that that the request for accommodations were being submitted by the District but that it was too late. The District, however, told OCR that it never submitted a request for accommodations to the College Board for Student A. The Student's mother told OCR that the night before the PSAT, she received a text message telling her not to bring her daughter in for the exam because the District did not have a braille version of the test. Student A therefore did not have the opportunity to take the PSAT.
- Student A's case manager told OCR that she believed that the school ordered a braille copy of the test for the student and that it arrived, but she did not know who at the school had received it. However, other district staff told OCR that braille copies of the PSAT are only provided by the College Board for students

where accommodations had been approved, which had not happened for Student A.

- School staff provided conflicting explanations of why accommodations were not provided for Student A. The School's Principal said that the case manager was responsible for arranging accommodations. The Student's case manager told OCR that she was not aware that approval of accommodations was required, but also stated that the School's PSAT coordinator would have been responsible for obtaining approval for accommodations. The Principal also said she had a conversation with the student's visual itinerant teacher, in which the Principal told the visual itinerant teacher that the Student was having health problems. As such, the Principal told OCR that she assumed the student was not taking the test. The Student's case manager told OCR that she "probably" would have had communications with Student A's mother about whether the student was going to attend the PSAT, but the case manager could not provide details. The PSAT Coordinator told OCR that she gave Student A's case manager a form that described the accommodations request process, and that the request for accommodations process "might" have been started but never finished.
- Neither the Principal nor Student A's case manager nor the PSAT Coordinator could remember actually receiving any specific information (or an opt-out form) that Student A was not taking the PSAT. The case manager told OCR that she may have had some communications with other school staff the week before the test about whether the student was planning to attend the PSAT, but she could not provide any details. None of the staff interviewed were knowledgeable about the College Board's December 15, 2015 deadline for requesting accommodations.

*Student B (Vista Murrieta High)*

- Student B was a student at Vista Murrieta High School who was legally blind. Her IEP required that the District provide braille accommodations for tests. In the IEP and other documents reviewed, there were no notations or other statements that would show that the PSAT was discussed at the Student's most recent IEP meeting prior to the PSAT.
- On February 1, 2016, the Student's case carrier verbally asked the School's SSD (Services for Students with Disabilities) Coordinator and PSAT Coordinator about how they were going to provide accommodations for the upcoming PSAT exam for Student B. At that point the school realized that it had failed to request accommodations for Student B on a timely basis pursuant to the December 15, 2015 College Board deadline.
- On February 2, 2016, the school submitted a request for accommodations to the College Board. That request was not approved by the College Board until April 7, 2016, approximately six weeks after the test. The College Board approved

accommodations of braille and a braille writer, and extended time (double the normal amount of time).

- Because the Student's accommodations were not approved, the school did not have a braille version of the test to give Student B. Instead, Student B took the test with an instructional aide who read the test questions to her and wrote down her answers on the answer sheet. In acknowledgement of their mistake, the school agreed to cover the cost of a future PSAT examination during Student B's junior year.
- After the test, the school's PSAT coordinator sent an irregularity report to the College Board detailing the accommodations that were provided but not approved. The College Board told the PSAT Coordinator that it would not score the test because of the irregularity, but that the school could score the test on its own if it chose to. The school, however, had already sent Student B's answers to the College Board, so it did not have a copy of the test to score. As of the date of OCR's interview of school staff on September 9, 2016, the school had not yet obtained the copy of the test from the College Board and so had not provided the student with any score for her test.

*Student C (Murrieta Valley High)*

- Student C was a student at Murrieta Valley High with a visual impairment, who, according to his IEP and his case manager, required large-print materials and extended time for tests. The IEP meeting notes from the Student's IEP meeting prior to the PSAT do not reflect any discussion of the PSAT.
- Student C's case manager told OCR that no accommodations were requested for the student through the College Board.
- The case manager told OCR, however, that she did provide Student C with a large print version of the test. The case manager told OCR that she did not know who had enlarged the test but that it was done by someone at the school. The case manager also provided him with any extra time he needed in order to complete the test.
- The case manager told OCR that Student C started taking the test with the large-print version. The student, however, found it too difficult and cumbersome to flip back and forth between the pages of the enlarged version, so he decided to use the original version. The case manager told OCR that he could see the version without large print but it was harder for him because it put a strain on his eyes that tires him out.
- The school submitted Student C's test to the College Board without an irregularity report disclosing that he took the test with unapproved

accommodations (the large-print version and the extended time), and so the student received his score on the test.

- Student C's case manager told OCR that she viewed the test as a practice so she let her students do what they wanted and used it as a way to figure out what accommodations they would need on the PSAT for their junior year.

*Student D (Murrieta Valley High)*

- Student D was a student at Murrieta Valley High. According to her IEP, Student D is legally blind and requires magnified text or text-to-speech capabilities and a one-on-one aide to access the curriculum. The IEP meeting notes from the Student's IEP meeting prior to the PSAT do not reflect any discussion of the PSAT.
- The District did not request approval of any accommodations through the College Board.
- The Student was provided an enlarged copy of the exam questions by her case manager, and her case manager assisted the student by transcribing the student's responses onto the answer document. The Student's case manager told OCR that she was prepared to provide the student with extended time, but she did not need any additional time. No irregularity report was submitted to the College Board, so the Student received her scores.

*Student E (Vista Murrieta High)*

- Student E was a tenth grade student at Vista Murrieta High School with a vision impairment. According to the Student's IEP, the student had left side blindness and compensates with her vision in her right eye. According to the student's IEP, the student also has other disabilities and was in a special education classroom 80% of the time and a general education environment 20% of the time.
- The student's IEP dated October 7, 2015 stated that the student's parents wanted her to go to college. The IEP meeting notes from the October 7, 2015 meeting do not reflect any discussion of the PSAT.
- Student E did not take the PSAT in February 2016. OCR did not find any evidence that anyone discussed the PSAT with Student E before the College Board's December 15, 2015 deadline, and no accommodations were requested on behalf of the student.
- The District's written response to OCR stated that "the student decided not to take the PSAT." However, the School's PSAT coordinator reported that she did not have an opt-out form for the student showing that the student opted out of the

test, nor did the student's counselor know whether the student ever communicated that she did not want to take the test. The Student's case manager reported that he sent a notice home on approximately February 3, 2016 asking Student E's parents to return a form regarding whether they wanted their daughter to take the PSAT but that he could not recall whether he received a response from the Student's parents. None of the people OCR spoke to from Vista Murrieta provided any information that would support the District's assertion to OCR that the student did not want to take the PSAT.

*Student F (Murrieta Valley High)*

- Student F was a student at Murrieta Valley High who is legally blind with a history of cataracts. The District reported that in addition to his visual impairment, the Student had a severe developmental disability and did not show interest in taking the PSAT.
- The District did not provide OCR with an opt-out form for the student or information as to any discussion with the student about the PSAT. The PSAT Coordinator for Murrieta Valley High reported that he was not even aware that there was an opt-out form for the February 2016 PSAT administration. However, the student's IEP reflected goals such as identifying basic shapes such as a square and circle and responding to basic verbal prompts, indicating that a test such as the PSAT may not have been appropriate for the student. The IEP meeting notes from the Student's IEP meeting prior to the PSAT do not reflect any discussion of the PSAT.

2016-17 School Year

- After this complaint was filed, the District offered the PSAT again on October 19, 2016. In preparation for that examination, staff interviewed by OCR described a more concerted effort to ensure that students with disabilities were approved for accommodations.
- The District told OCR that a letter was sent out to parents in August 2016 advising parents to contact their child's counselor if they needed an accommodation for the October exam. However, the College Board's deadline for requesting accommodations was August 30, 2016, and the letter to parents was dated August 17, 2016. One parent told OCR of receiving the letter on August 22, 2016. The letter directed parents that if they wanted an accommodation for their student for the October PSAT, they should notify their student's case manager or counselor and send in an accommodations form by August 25, 2016, three days later.
- At Vista Murrieta High, as of August 30, 2016, the school told OCR that it had reviewed all freshman and sophomore students with IEPs or Section 504 plans and applied for accommodations for 128 students, regardless of whether they

were planning to take the PSAT. However, at Murrieta Valley High, staff reported that accommodations were only requested if parents responded to the letter.

### **Analysis & Conclusions of Law**

Under Title II, Section 504 and their implementing regulations, the District has an obligation not to discriminate against individuals on the basis of disability in the provision of the District's programs and services. Under the regulations, the District has an obligation to provide appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the District. The District also has an obligation to provide a free, appropriate public education to students with disabilities, meaning that it must provide services designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met.

In 2015-16, the District offered the PSAT to all tenth graders in the District for the first time. The purpose of allowing students to take the PSAT, as described by the District, was to "provide an update on student progress and pinpoint[] areas for development" and to provide "students, parents, and staff with valuable feedback to support student growth." While the PSAT was administered by the College Board, by offering all students the benefit of this program at its facilities, the District had an obligation to make sure that the opportunities afforded to students with disabilities were equal to those afforded other students. See 28 C.F.R. §35.130(b) (providing that a public entity may not discriminate on the basis of disability "directly or through contractual, licensing, or other arrangements.") By failing to take the steps necessary to request accommodations, the District failed to make this opportunity available on an equal basis as required by the regulations. See 28 C.F.R. §35.130(b)(1) (public entities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others); see also 28 C.F.R. § 35.160(b)(1) (schools must provide appropriate auxiliary aids and services so that students with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the public school district).

The District did not timely request accommodations for any of the six tenth grade students with visual impairments. While the circumstances of each of the six students were slightly different, students with visual impairments generally did not have an equal opportunity to participate in and enjoy the benefits of this District program, as described below.

For example, Student A was not able to take the PSAT at all in February 2016, despite the Student's mother having submitted documentation in October 2015 from the student's doctor to substantiate her need for accommodations. As noted above, District staff provided varying explanations as to who was responsible for requesting accommodations for Student A and why they were not requested. However, it was not disputed that no one requested accommodations for Student A on a timely basis. OCR also did not find sufficient evidence to support the assertion that Student A decided not

to take the test. Staff interviewed by OCR could not provide any specific memory of the student or her parents telling the District that she was not planning to take the test. The only information provided to OCR from school staff was that there may have been some discussion in the weeks leading up to the test about whether or not the student was going to take the test. However, by that date, the deadline for requesting accommodations had passed at least a month before, meaning that the student would not have been able to take the test with braille in any event.

Students B, C, and D took the PSAT, but because their accommodations were not approved, they did not take the test under the same conditions that the College Board provides, making the test less helpful as practice. For example, Student B took the test with an aide, but the College Board accommodation that is now approved for her is to use braille. Furthermore, because her accommodations were not approved, Student B had not even received a score on the test that she could have used to pinpoint strengths and weaknesses to improve for the next examination. Similarly, Student C took the test with an enlarged version of the test that was provided by the School, but decided not to use it because the enlarged version provided by school staff (not the College Board) was too cumbersome. The Student also apparently took the test with no time limits, which is not the same conditions under which he will have to take it going forward. Similarly, Student D was provided a copy of the exam that was enlarged by District staff and provided a scribe to transcribe her answers, accommodations which may have been different than what the College Board would have approved. In sum, Students B, C and D did not have the opportunity to take the test under the conditions that will be present when they take the PSAT and SAT using accommodations approved by the College Board.

Students E and F were students with more severe disabilities who did not take the PSAT, and who may have decided not to take the test if it had been offered to them. However, there is not sufficient evidence to conclude that the District provided these students (and other students like them) the opportunity to take the test with accommodations. The District had an opt-out form that should have been used for this purpose, but the District did not have opt-out forms for either Student E or Student F. The PSAT Coordinator for Murrieta Valley High reported that he was not even aware that there was an opt-out form for the February 2016 PSAT administration. Similarly, the case manager for Student E reported that he sent information home to Student E's parents in early February 2016 to try to determine whether Student E wanted to take the PSAT, but at that point the school had missed the deadline for accommodation requests by six weeks, so the Student would not have had the opportunity to take the test with accommodations if she wanted to do so.

The experiences of these six students were consistent with what would be expected given the confusion OCR found among District staff as to who was responsible for requesting accommodations from the College Board. OCR spoke to counselors, case managers, PSAT coordinators and SSD coordinators at three high schools in the District. These individuals gave a variety of inconsistent answers as to who was responsible for requesting accommodations. None of the individuals OCR spoke to

understood that it was their responsibility to ensure that students with disabilities received accommodations for the February 2016 administration of the test, and none seemed aware of the College Board's deadline. Commonly, staff told OCR that the accommodations process had not yet been worked out because this was the first year that the District had provided the test districtwide for all tenth graders.

For these reasons, OCR found sufficient evidence to conclude that the District's failure to have a clear, consistent process as to who was responsible for requesting accommodations for the February 2016 administration of PSAT and the deadline for doing so resulted in the District's failure to meet its obligations under Section 504 and Title II and their implementing regulations to provide an equal opportunity for students with visual impairments to benefit from District programs and services.<sup>7</sup>

The investigation also raised concerns that the District's responsibility to provide students with a free, appropriate public education was not met. The District is responsible for providing aids and services designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students. OCR reviewed the IEP plans and meeting notes for each student identified with a visual impairment, and found no evidence of any discussion amongst the IEP teams as to what accommodations these students would have needed for the PSAT in order to meet their needs, even though such IEPs did generally include information about what accommodations the students needed to have equal access to other exams and tests. For example, for Student C, the IEP meeting notes for May 10, 2016 stated that the "[t]eam discussed state assessment participation. Team agreed that [Student] will participate in general education CAASPP testing with accommodations. The accommodations will be: separate seating, administration at most beneficial time, large print versions of paper-pencil tests, magnification (3x's), separate setting." As such, the investigation raised a concern that, in its IEP process, the District did not consider whether such testing and exam accommodations applied to the PSAT and how to implement them for that test.

OCR also notes that while the College Board does allow parents to request accommodations directly from the College Board itself, it requests that parents work with the District to obtain such accommodations and states that it prefers that school districts make the request. This option does not eliminate the District's obligations under Section 504 and Title II. The districtwide administration of the PSAT was a service offered free of charge by the District to all students in the District at the District's facilities, and at no point were parents or students notified that they would need to request accommodations on their own in order to participate in this activity. In fact, Student A's mother explicitly provided information to the District to request the accommodations, and the District did not direct her to submit the accommodations

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<sup>7</sup> While the allegation in this complaint involved only students with visual impairments, OCR's interviews with school staff indicated that the problems identified for students with visual impairments likely also impacted students with other disabilities. The Resolution Agreement in this case therefore requires the District to develop a plan for OCR review and approval that would ensure that the District requests approval of appropriate accommodations for all students with disabilities.

herself. Without such notification, the District clearly did not provide students with visual impairments equal opportunity to participate in this District activity. The Title II regulations at 28 C.F.R. §35.130(b) provide that a public entity may not discriminate on the basis of disability “directly or through contractual, licensing, or other arrangements.” Here, the District offered a program for all students, but did not provide an equal opportunity for students with disabilities to participate either by requesting accommodations itself or by providing parents with timely notice of their need to request the accommodations.

OCR also notes that after the completion of OCR’s investigation, the District offered the PSAT to students again in October 2016. OCR did not expand the scope of the investigation to include the October 2016 administration of the PSAT, but did speak with several individuals about the District’s efforts in advance of the exam to ensure accommodations were approved for students with disabilities. These conversations revealed some additional positive efforts to ensure that accommodations were provided for students with disabilities. For example, as of the date of interviews with OCR, staff at at least one high school, Vista Murrieta, were attempting to request accommodations through the College Board for every student with a disability, regardless of whether the school knew if the student planned to take the fall 2016 PSAT. (Once accommodations are approved by the College Board, they generally apply to all future administrations of the PSAT and SAT while the student is in high school). However, other information obtained by OCR raised concerns about whether accommodations were being requested on a timely basis across the District, given that it appeared that parents of students with disabilities at Murrieta Valley High were asked to return a form to ensure that accommodations were approved, but that parents were only given a few days to return the form before the deadline. However, these concerns are being addressed by the requirement in the Resolution Agreement that the District develop and implement a revised plan for future administrations of the PSAT, which OCR will review and approve.

### **Conclusion**

OCR thus finds that the District did not meet its obligations under Title II and Section 504 and their implementing regulations with respect to the February 2016 administration of the PSAT.

Without admitting to any violation of law, the District entered into the enclosed Resolution Agreement (Agreement) which resolves the non-compliance determination described above. The enclosed Agreement is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. The Agreement requires that the District provide the students with visual impairments who missed the opportunity to take the PSAT with additional tutoring and with an opportunity to take the PSAT or the SAT free of charge on a future occasion. It also requires the District to develop policies and procedures and issue written guidance and conduct training to ensure that accommodations are requested for students with disabilities for the PSAT in the future.

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 compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the statutes and regulations at issue in the case.

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 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank you and your staff for your courtesy and cooperation in resolving this case. If you have any questions, please contact Blake Thompson, Civil Rights Attorney, at (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Encl: Resolution Agreement

cc: XXXXX XXXXXX (by email only)