



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

January 18, 2017

José L. Banda  
Superintendent  
Sacramento City Unified School District  
5735 47th Avenue  
Sacramento, CA 95824

(In reply, please refer to case no. 09-16-1954.)

Dear Superintendent Banda:

The U.S. Department of Education, Office for Civil Rights (OCR), has reached a resolution in the above-referenced complaint of disability discrimination against Sacramento City Unified School District (District). The Complainant's allegations were related to a District school (School) that utilizes a specialized instructional method.<sup>1</sup> The Complainant alleged that the School: (1) discriminates against students on the basis of disability by requiring them to submit documentation of their disability in order to participate in the School's lottery enrollment process; (2) does not provide appropriate auxiliary aids and services where necessary to provide equally effective communication for students with disabilities when assistive technology conflicts with the School's instructional method; and (3) makes placement determinations for students with disabilities on the basis of the School's instructional methodology rather than the unique needs of the student.

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

To investigate the complaint, OCR reviewed documents and other information provided by the Complainant and the District and interviewed the Complainant and a Witness. Under Section 302 of OCR's Case Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, the district expresses an interest in resolving the complaint.<sup>2</sup> During the course of OCR's investigation process, the District expressed an interest in resolving this complaint. On January 10, 2017, the District submitted a Resolution Agreement (Agreement)

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant. We are withholding the Complainant's name from this letter to protect the Complainant's privacy.

<sup>2</sup> The Case Processing Manual is available on line at: <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>

which, when implemented, is intended to resolve OCR's compliance concerns in this investigation with regard to the documentation the District appears to require before entering students into its enrollment lottery. For this reason, OCR did not complete its investigation or reach findings with respect to Allegation 1. However, with regards to Allegations 2 and 3, OCR has determined that there is insufficient evidence to support a conclusion that the District failed to comply with Section 504, Title II and their implementing regulations.

The applicable legal standards, the facts gathered to date, and the reasons for OCR's determinations are summarized below.

**Issue 1:** *Whether the District discriminates against students on the basis of disability by requiring them to submit documentation of their disability in order to participate in the District's lottery enrollment process.*

### Legal Standards

Under the Section 504 regulations, at 34 C.F.R. § 104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. § 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. § 104.4(b)(1) and 28 C.F.R. § 35.130(b)(1) a public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service; (ii) afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others. . .(vii) limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

### Facts Considered

- The Complainant alleged that the School discriminates against students with disabilities by requiring them to provide documentation related to their disabilities before allowing them to participate in the School's lottery.
- The District employs "Open Enrollment" which, according to Board Policy 5116.1, is "an opportunity for each student who resides permanently within the boundaries of the [District] to apply for enrollment in any school within the district based upon space

availability at the school. This application must be completed during the specified Open Enrollment period.”

- The District reported to OCR that all District Open Enrollment applicants grades K-12 are entered into the District’s digital Open Enrollment system, which includes a screen containing a box to mark regarding whether the student applicant has an individualized education plan (IEP).
- The District’s Administrative Regulation (AR) related to its Early Kinder Program, AR 6170.1, states that a “[p]erson enrolling any child in Early Kinder will be required to present the following documentation: \* Individual Education Plan – If applicable”.
- The District’s Early Kindergarten Information form asks parents to identify all of the “[s]pecial education services” the student has received. The form also requires the parent to attest that “I understand that I have completed this form for information and I still need to complete enrollment. I also understand this does not guarantee placement in the school or program which I have requested.”
- The District’s Early Kinder Student Registration form asks parents to identify “known health problems” and inquires which services the child receives, and lists several options related to disabilities.
- All of the District’s registration packets include IEPs in a list of “documents . . . required to complete enrollment for students NEW to the district.”
- The School’s website states that a child seeking to enroll at the School will not be entered into the School’s lottery to attend the School until both the District and the School’s criteria are met.

### Analysis

The Complainant alleged that the School requires students with disabilities to submit documentation of their disabilities before they are considered for the School’s enrollment lottery. Enrollment in grades K-12 at all District schools– including at the School – is governed by Board Policy 5116.1. The District’s Administrative Regulation 6170.1 governs enrollment into the District’s Early Kinder Program. The District reported that as part of its “Open Enrollment” process, all applicants are entered into the District’s digital open enrollment system, which includes a screen that requires the student to indicate whether the student has an IEP. Similarly, the District’s enrollment documents, including the registration packets and the District websites, all “require” that a family submit information about a student’s disability before the District will forward the student’s name to the school (for the school’s onsite pre-K enrollment lottery) or allow the student’s name to be entered into the District run lottery for Kindergarten enrollment. OCR is concerned that the District’s policy, procedures, and enrollment packets require that a potential student disclose whether they have a disability or what sort of services the student has utilized in the past. OCR is additionally concerned that the “Early Kinder Information form,” which parents submit merely to gain information about a school’s pre-K program, and which

requires parents to attest that they will “still need to complete enrollment,” seeks information about any Special Education services the putative student has received.

Before OCR completed its investigation, the District expressed an interest in resolving the concerns identified by OCR with regard to this allegation and OCR determined that it is appropriate to resolve this issue through a resolution agreement, pursuant to Section 302 of OCR’s Case Processing Manual. To determine whether the District has violated Section 504 and Title II with regard to this issue, OCR would need to discern if any students were not allowed to participate in the enrollment lottery because of the District’s policy and practice of requiring disability-related information to be submitted during the lottery process. However, on January 10, 2017, the District entered into the attached Agreement with OCR in which the District agreed to: 1) review all relevant board policies and administrative regulations, websites, enrollment information forms, parent handbooks, notices, etc. related to its open enrollment lottery process to identify the areas where the items reference the disclosure of a student’s health status, “Individualized Education Plan documentation” and/or Special Education services during the open enrollment process; 2) provide a report to OCR about the items identified in that review, and the steps it will take to remove the references to a student’s health status, “Individualized Education Plan documentation,” and/or Special Education services during the open enrollment process; 3) remove the references to a student’s health status, “Individualized Education Plan documentation,” and/or Special Education services during the open enrollment process; 4) distribute to all District staff and school site administrators and any individuals who play a role in the student enrollment process, a guidance memorandum that includes a discussion of the District’s obligation not to discriminate against individuals with disabilities, and explaining the changes made to pursuant to the Agreement; 5) while undertaking the review of its enrollment documents and policies, the District will distribute a notice to all District staff and school site administrators and any individuals who play a role in the student enrollment process clarifying that IEPs, health status, or information about Special Education services should not be considered during the open enrollment process, and that no student shall be excluded from the open enrollment process for failing to provide the District with an IEP, or information related to a student’s health status or Special Education services.

**Issue 2:** *Whether the District does not provide appropriate auxiliary aids and services where necessary to provide equally effective communication for students with disabilities when assistive technology conflicts with the School’s specialized instructional method.*

### 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.

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>3</sup> Under Title II, districts must provide appropriate “auxiliary aids and services” where necessary to provide effective communication;<sup>4</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>5</sup>

### Findings of Fact

- The Complainant alleged that the School denied the Complainant’s child (Student) a FAPE because the Schools’ specialized instructional methodology does not introduce technology to children until a later grade.
- The Complainant’s assertions were addressed through proceedings before the California Department of Education, Office for Administrative Hearings (OAH). As captured in a written opinion, an administrative law judge concluded that the Student was not denied a FAPE by the District, even though the School did not provide the Student with assistive technology.
- The Complainant provided OCR with another parent with children who attend the School (Witness) whom the Complainant believed could serve as a witness with regard to this allegation.
- OCR interviewed the Witness and confirmed that the Witness has children who attend the School.
- One of the Witness’s children has an IEP plan, but this student has not been found to need assistive technology in order for the District to provide the student a FAPE.

### Analysis & Conclusions of Law

Here, though Complainant alleged that the District failed to provide a FAPE to students who required assistive technology because doing so would conflict with the instructional method

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<sup>3</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>4</sup> 28 C.F.R. § 35.160(b)(1).

<sup>5</sup> 28 C.F.R. § 35.160(b)(2).

employed at the School, neither the Complainant nor the Witness provided evidence that substantiated this allegation. Specifically, the Witness's student who attends the School has not been found to require assistive technology. Moreover, with regards to the Complainant's assertion, the OAH already concluded that the Student was provided with a FAPE. Accordingly, OCR finds insufficient evidence that the District violated Section 504 or Title II with regard to this issue.

**Issue 3:** *Whether the District makes placement determinations for students with disabilities on the basis of the School's teaching methodology rather than the unique needs of the student.*

### 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.

Section 104.35(c) of the Section 504 regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, 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.

### Findings of Fact

- The Complainant alleged that the School makes placement determinations for students with disabilities on the basis of the School's instructional methodology and not on the needs of students. The Complainant raised this contention about the Student to the OAH and an administrative law judge concluded that the Student was provided a FAPE.
- The Complainant provided OCR with a Witness to discuss her student's placement at the School. The Witness told OCR that her student's teacher recommended a placement for the student that would remove the student from the School. The Witness stated she felt pressured by the teacher to choose such a placement outside of the School.

- The Witness thought the teacher's recommendation to remove the student was related to the School's specialized instructional method. She, however, did not proffer any evidence to support that contention.
- The Witness stated that she contacted the District Director of Education to inquire about the options regarding her student's placement, and that the District Director confirmed that while she could choose to remove the student from the School, she could also choose to keep the student at the School.

### Analysis & Conclusion of Law

The Complainant asserted that the School would not provide students with specialized instruction intended to address a student's disability where utilizing those instructional methods would contradict the School's particular instructional methods. Here, neither the Complainant nor the Witness provided evidence that substantiated the allegation that the District made placement decisions for students on the basis of the School's teaching methodology rather than on a student's unique needs. Though the Witness stated that she felt her student's teacher was pressuring her to remove the student from the School – change her placement – the Witness provided no facts connecting the teacher's recommendation for the change to the School's instructional method. Additionally, the District Director of Special Education confirmed to the Witness that she can choose to keep her student's current placement at the School. As regards Complainant's assertion, an administrative law judge concluded that the Student was provided with a FAPE. Accordingly, OCR finds insufficient evidence that the District violated Section 504 or Title II with regard to this issue.

### Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing this case 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 the Agreement until the District is in compliance with Section 504, Title II and their implementing regulations.

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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because they have filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

OCR would like to thank your staff, especially Raoul Bozio, for their cooperation and courtesy in resolving this matter. If you have any questions regarding this letter, please contact Araceli Martínez-Olguín, Civil Rights Attorney, at (415) 486-5589 or a.martinez-olguin@ed.gov.

Sincerely,

/s/

Kana Yang  
Acting Team Leader

Enclosure: Resolution Agreement

cc: Raoul Bozio, Legal Services Manager II (*via email only*)