



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
ARIZONA  
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NEW MEXICO  
UTAH  
WYOMING

July 21, 2020

Mr. XXXXXXXXXXX, Superintendent  
Vail Unified School District  
13801 East Benson Highway  
P.O. Box 800  
Vail, Arizona 85641

*Via email at:* XXXXXXXXXXXXXXX

Re: **Vail School District**  
OCR case number 08-20-1225

Dear Superintendent XXXXXXX:

We have completed our investigation of the above-referenced complaint, received on January 31, 2020. The Complainant alleged that Vail Unified School District (District), at XXX School (School), discriminated based on disability (XXXX). Specifically, the Complainant alleged that the District failed to timely evaluate the Student for special education and related aids and services, specifically for Occupational Therapy (OT) needs, thereby denying the Student a free appropriate public education. The Complainant also alleged that the District failed to implement the Student's Individualized Education Program (IEP) because it failed to notify the Complainant of the Student's progress, and it marked the Student's assignments missing or late.

The Office for Civil Rights (OCR) is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Department federal financial assistance and a public entity, the District is subject to these laws and their implementing regulations.

OCR reviewed information provided by the Complainant and District and interviewed the Complainant. Prior to OCR issuing a final determination, the District expressed an interest in resolving one of the allegations being investigated, regarding whether the District timely evaluated the Student for OT. OCR determined that it was appropriate to resolve this allegation pursuant to Section 302 of our Case Processing Manual (CPM). The provisions of the Agreement are tied to the allegation opened for investigation and evidence obtained during the investigation and are consistent with applicable regulations. Further, we found that the District did not discriminate as alleged regarding implementation of the Student's IEP.

**Evidentiary Standard**

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient

to support a conclusion. Specifically, OCR examines the evidence in support of and against a conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

### **Legal Standards**

The Section 504 regulations at 34 C.F.R. Section 104.33(b) states that the provision of a free and appropriate public education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities. 34 C.F.R. §104.35(b) states that school districts shall establish standards and procedures for the evaluation and placement of students who need or are believed to need special education or related services. Section 104.35(c)(3) requires that in making placement decisions, school districts must ensure that the placement decision is made by a group of persons that includes persons knowledgeable about the child and that a variety of information is considered.

### **Factual Background**

#### *OT Evaluation:*

During the 2019-2020 school year the Student was enrolled at the School in XX grade, with an IEP. The Complainant previously requested a full OT evaluation for the Student. The Complainant provided the School with an outside OT evaluation. OT screeners were conducted by the District, and no further testing was deemed needed by the District. The Complainant requested an Independent Educational Evaluation for OT, and at a February 6, 2020 IEP meeting the idea of the District performing an OT evaluation was discussed. The District committed to evaluate for OT, as documented in a Prior Written Notice (PWN) dated February 10, 2020. The District received informed written consent from the Complainant for the evaluation. The District's last day of students on campus in SY 2019-2020 was March 6, 2020 due to the COVID-19 pandemic. The OT evaluation was underway when schools closed on March 15, 2020. A PWN dated April 14, 2020 documented that the OT evaluation will be completed when school reopens after the mandated school closure that began on March 15, 2020.

#### *Implementation of IEP:*

The Student's February 28, 2019 IEP was in effect during SY 2019-2020 through early February 2020. While notice of academic progress is not specifically mentioned in the accommodations section, the IEP's Parent Communication section states that the Student's parents will be informed of academic progress through the Annual IEP meeting, IEP Progress Reports, the Web-based Student Management System, and in email and phone communication. The Student's February 6, 2020 IEP more explicitly addresses the District notifying the Complainant about the Student's academic progress, notably stating in the Accommodations section:

Classroom teachers will email parents and special education staff if an assignment was not submitted by its due date, with details of the missing assignment. Classroom teachers should not input a 0 in the gradebook for that assignment, but provide [the Student] with additional time to complete the missing assignment (up to four school days), without penalizing [the Student] for a late submission.

Regarding notice of general academic progress, the School provides parents with log-in information to PowerSchool (where teachers upload scores for graded assignments) and Schoology (which holds information about assignments students were working on and what was due), enabling parents to monitor their child's grades and work completion rates. Parents of students with IEPs are entitled to receive information about their student's progress on IEP goals. The Student's parents received quarterly progress reports related to Student's IEP goals. Specifically, IEP progress reports were mailed home on September 30, 2019, December 20, 2019, March 6, 2020, and May 27, 2020. Those progress reports are included in the body of the Student's IEPs. The parties provided emails indicating that the Complainant received information about the Student's work and academic progress, often based on him proactively sending emails to teachers to inquire about the Student's specific academic progress.

During SY 2019-2020, the Student received A grades, including in his gifted and talented education classes.

### **OT Evaluation**

The Complainant alleged that the District failed to evaluate the Student for special education and related aids and services, specifically Occupational Therapy (OT). While the District conducted an OT screener, it did not conduct a full evaluation.

The District indicated an interest in entering a voluntary resolution agreement, committing to conduct an evaluation of the need for OT. Further interviews with District staff would be needed to determine whether the District failed to timely evaluate for OT. Further information was not obtained, and further interviews were not conducted, because during our investigation and before we made final findings regarding the complaint allegation, the District expressed a willingness to resolve the complaint. The District agreed to conduct the full evaluation, and if services are warranted will consider whether compensatory services are owed for SY 2019-2020.

A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, this allegation will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. We will provide the District with written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action as described in the Agreement. The Complainant will receive a copy of our monitoring letters.

### **Implementation of IEP**

The Complainant also alleged that the District failed to implement the Student's Individualized Education Program (IEP) because it failed to notify him of the Student's progress, and it marked the Student's assignments missing or late. The Complainant stated that the District guided him to rely on the standard tools and platforms the school was already using to schedule assignments and monitor completion. Specifically, instead of the teacher communicating to the parents what needed to be completed at home, the Complainant was told to rely on Schoology reporting, a tool that teachers use to "schedule" assignments. Another tool he was told to rely on was PowerSchool, which shows grades as

these were entered. He stated that with Schoology, he had no way of knowing whether assignments were submitted because teachers would not consistently use these tools, and he would receive notices that required assignments were not submitted even though these were submitted, or overdue even if these weren't. The Complainant stated that he was instructed to transition to PowerSchool, but this was only useful to demonstrate non-compliance. For example, if an assignment was due Monday, it might not be marked as missing until Friday, and then it could take yet another week before an 'F' grade was entered into PowerSchool. So, the Complainant would not know about it to intervene for a while.

In its data response, the District stated that until the 2020-2021 IEP went into effect, the school had no obligation to provide documentation to Complainant indicating that Student was late in turning in or missing assignments. The District included examples of emails between teachers and the Complainant. In addition to emails updating the Complainant about the Student's progress, there were emails from the District to the Complainant providing copies of IEPs and PWNs.

In his rebuttal response the Complainant argued that in the fall 2019, the Student continued to be penalized for late assignments and the Complainant was not notified timely or was incorrectly notified, resulting in shorter deadlines for those assignments. Upon complaining, some assignments were exempted and penalties were reversed. For example, the Complainant states that he was led to believe the Student had an 'A' average and was current on all science assignments, while on December 4, 2019, he was told the Student had nine F grades for missing assignments going back to October 18th, and that he had until December 13, 2019 (just over a week) to make the assignments up before the gradebook was closed. The Student was able to make up the assignments.

OCR found that the Student's 2019-2020 IEP, which was in effect until February 10, 2020, did not require that teachers notify the Complainant of late or missing assignments under the Accommodations section. Instead, under the Parental Communication section, the student's IEP indicates that the Student's parents are to be informed of the Student's academic and IEP goal progress via annual meeting, IEP Progress Reports, the web-based student management system, and email and phone communication. We found that this notice occurred. For example, a copy of the Progress Reports were provided, and the District submitted documentation supporting that teachers communicated with the Complainant about the Student's work. Both parties provided documentation supporting that the Complainant identified and followed up with teachers on the Student's late and missing assignments, often initiated by the Complainant. It was in February 2020, that a new IEP included an accommodation requiring that classroom teachers email the Student's parents if an assignment was not submitted by its due date, with details of the missing assignment. There were only 17½ additional days of school in 2020 from then until schools were closed.

In summary, the District provided what was required by the 2018 IEP regarding notice of academic progress from the beginning of SY 2019-2020 through February 2020. Specifically, the Student's parents were informed of the Student's academic and IEP goal progress via annual meeting, IEP Progress Reports, the web-based student management system, and email and phone communication. We found that this notice occurred. If the Complainant was concerned with a general lack of specificity in the IEP for the IEP term, such would have been a disagreement with the content of the IEP and a subject appropriate for due process. Once the IEP required more specific notice to parents as a specific accommodation, there was a limited time of the school year before schools closed due to COVID-19, and there is information to support that such communication required by the February 6, 2020 IEP did occur. Therefore, OCR found that the District did not violate Section 504 and Title II as alleged.

**Conclusion**

Please note a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please also be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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 has a right to appeal OCR's determination within 60 calendar days of the date on this letter. In the appeal, the Complainant must explain: (a) why the factual information was incomplete or incorrect, the legal analysis was incorrect, and/or the appropriate legal standard was not applied; and (b) how correction of any error(s) would change the outcome of the case. Failure to provide these explanations may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal to the District. The District may submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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

Thank you for your cooperation and attention to this matter, and the assistance of Cathleen Dooley. If you have any questions, please contact xxxxxxxxxxxx at xxxxxxxxxxxxxxxxxxxx or by email at xxxxxxxxxxxxxxxxxxxx.

Sincerely,

/s/  
XXXXXXXXXXXXXXXXXXXX  
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

Cc (via email): Counsel  
Superintendent, Arizona Department of Education