



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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

August 17, 2012

Jon R. Gundry  
Superintendent  
Pasadena Unified School District  
351 S. Hudson Ave.  
Pasadena, CA 91101

(In reply, please refer to case no. 09-11-1054.)

Dear Superintendent Gundry:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Pasadena Unified School District (District). The complaint alleged the District discriminated against the named student (Student) and the Student's parent<sup>1</sup> (Parent) based on disability and national origin language minority status. OCR investigated the following issues:

1. Whether the District failed to provide the Student with a free appropriate public education (FAPE) in the 2009-10 and 2010-11 school years by failing to provide the related aids and services necessary for the Student to participate in and benefit from the educational program, including: textbooks in alternative media (Braille); a new BrailleNote device; an updated screen reader (JAWS) program; and an abacus and Math Window at home and at school.
2. Whether the District has a policy against the use of guide dogs.
3. Whether the District denied the Parent the opportunity to participate meaningfully in the special education process by failing to provide oral interpretation and written translation of important information and documents in the Parent's primary language.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and their implementing regulations. Section 504 and Title II prohibit

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<sup>1</sup> OCR notified the District of the name of the complainant and Student involved when the investigation began. OCR is withholding their names from this letter to protect their privacy.

discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance and by public entities, respectively. Similarly, Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and Title VI.

OCR gathered evidence through interviews and documents provided by the complainant and the District. Based on the evidence obtained, OCR concluded that there was insufficient evidence to support a conclusion of noncompliance by the District with respect to the individual student concerns in Issue 1 and with respect to Issue 2. OCR identified systemic compliance concerns related to Issue 1 and regarding Issue 3, OCR concluded that there was sufficient evidence to support a conclusion of noncompliance of Title VI and its implementing regulations by the District. However, the District without admitting to any violation of law, agreed to enter into and implement a remedial agreement, which when fully implemented, will remedy the compliance concerns of OCR. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

*Issue 1: Whether the District failed to provide the Student with a FAPE in the 2009-10 and 2010-11 school years by failing to provide the related aids and services necessary for the Student to participate in and benefit from the educational program, including: textbooks in alternative media (Braille); a new BrailleNote device; an updated JAWS program; and an abacus and Math Window at home and at school.*

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a 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. 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.

Our investigation of the facts showed the following:

- The Student has multiple medical conditions. The District found her eligible for special education and related services under the Individuals with Disabilities Education Act categories of visual impairment (VI) and specific learning disabilities. During the 2009-2010 and 2010-2011 school years, the Student was enrolled in ninth and tenth grade at a District high school (School).

- The District provides VI instruction as a “pull-out” service. According to the District, the Student was supposed to attend VI instruction three times a week for forty minutes each, so that the VI Teacher could work with the Student on the following: Braille instruction; Braille and BrailleNote skills; math using an abacus and Math Window; and keyboarding using a traditional computer with JAWS software.
- In April 2010, the Student received a comprehensive assessment by the California School for the Blind (CSB) in the areas of education, orientation and mobility (OM), speech and language, psychology, and assistive technology. According to the CSB assessment report prepared in June 2010, the Student’s reading and writing abilities (in Braille) and math were at the mid-second grade level and her social language skills were at the sixth grade level. CSB recommended that the Student receive a higher level of VI services and support, that she improve her Braille reading fluency, use an updated BrailleNote device, have access to new digital recording devices, and receive instruction in using an abacus with the goal of eventually using a talking calculator.
- During the 2010-11 school year, the complainant advocated for the Student’s VI instruction to be delivered as a “push in” service in the Student’s classrooms. The Student refused to go to the VI room to work with the VI and OM teachers, and according to the VI teacher, she worked with the Student approximately five times during the 2010-11 school year.

### Braille

- According to the complainant, the District did not timely provide the Student with homework, or classroom notes and materials in Braille. IEP notes from September 2010 and February 2011 document these concerns.
- The District understood the complainant’s primary concern to be that, rather than having District staff transcribe them into Braille, the District should order the Student’s textbooks in Braille directly from the publishers so that information such as pictures and graphs, which were not included in the District’s transcription, would be available to the Student. According to the District, it checked with the publishers, the State of California, and other California school districts, and was able to obtain only the Student’s math book in Braille.
- The District acknowledged to OCR that there may have been delays in ordering books for the Student because the District had relied on special education teachers to order textbooks for their students. A District special education administrator informed OCR that the process for ordering textbooks has since been centralized, so that all textbooks, including those for special education students, are now ordered at the same time as textbooks for general education students.

- For the 2010-11 school year, a District employee transcribed the Student's textbooks, on a chapter by chapter basis, as well as other materials, as needed following the Student's course schedule for each class. The District employee stated that she also transcribed other parts of the textbook, such as the glossary, if needed. With respect to charts, drawings, and pictures contained in the textbooks, the District employee stated that she included a description of the pictures/graphics in Braille; she indicated that graphics and pictures were only applicable to the Biology textbook. The Student's Biology, World History, Math, and English teachers expressed no problems or difficulties in timely obtaining materials and relevant portions of the textbooks transcribed into Braille for the Student. The Student's World History and Math books contain charts, drawings, or pictures.
- In addition to Brailled materials, the Student was given an audio CD of the Biology and History textbooks. The Student's aide copied words written on the classroom white board and then gave them to the District employee responsible for Braille transcription. The Student's aide also provided the Student with an oral explanation of pictures and graphs in the textbooks.

### BrailleNote

- BrailleNote is a machine, similar to a laptop computer, that can process and store information in Braille. According to the complainant, she made repeated requests to the District to provide an updated BrailleNote for the Student based on the CSB recommendation, so that the Student could keep up her skills on using this device, as well as training for the VI Teacher on using the device and instructing the Student on its use.
- September 2010 and February 2011 IEP notes indicate that the complainant requested a new BrailleNote at these meetings.
- OCR received conflicting information from the District as to when it ordered and received a new BrailleNote machine for the Student. In its written narrative response to OCR, the District stated that it ordered an updated BrailleNote, but it took approximately one year for the District to receive it; the written response to OCR's data request did not explain what caused the delay and whether the delay was attributable to the District or the manufacturer. In contrast, a District administrator told OCR that the District ordered the new BrailleNote device in September or October 2010, and received it in December 2010. According to the District, while waiting for the new BrailleNote machine, the Student was using an older version of BrailleNote, which performed the same functions except it did not allow access to the internet; the Student was able to access the internet through a computer using the Job Access With Speech (JAWS) computer screen reader program.
- OCR concluded that by the end of January 2011, the District received the updated BrailleNote device. However, prior to releasing the device to the Student, the District

required the complainant to sign a one-page form called “Assistive Technology Authorization for Home Use.” According to the District, this form is required to be signed by parents for every piece of assistive technology that it issues to students.

- The form indicates that while the District will be responsible for repair or replacement of devices that are lost, damaged, or destroyed, the student’s IEP team may discontinue the authorization for home use if the loss, damage, or destruction resulted from negligence or involuntary, unexpected, or abnormal use of the device.
- The District gave the assistive technology form to the complainant to sign in February 2011; the form was in English and the complainant requested a Spanish translation, which the District did not provide until May 25, 2011. The District was unable to articulate a reason for the delay in providing the complainant with a Spanish translation. According to the District, the Student was allowed to use the updated BrailleNote at School but was not allowed to take it home until the form was signed by the complainant.
- According to the District, the Student did not generally choose to use the BrailleNote device, and instead favored using a Braille Writer which basically served the same function. The Student had access to Braille Writers at the School, and if a Braille Writer was not already in one of the Student’s classrooms, the Student’s aide would bring a Braille Writer to the classroom.

### JAWS

- JAWS is a software program that allows VI students to hear what is on the computer screen. The District told OCR that a prior version of the JAWS program was installed on several computers in the VI room, on the Student’s home computer, and on all school library computers. JAWS was not installed on computers in the Student’s various classrooms. In its written response to OCR in February 2011, the District stated that it had ordered the most recent version of JAWS and was waiting for delivery.
- According to the complainant, the JAWS program that was installed on the Student’s home computer never worked and the School technician could not fix it; the certification for the JAWS software on the computers in the VI room had expired; the VI Teacher was not experienced in using JAWS and was not instructing the Student on how to use JAWS; and the Student, therefore, did not know how to use JAWS. Furthermore, the complainant believed that JAWS should have been available on the computers in the Student’s classrooms. The complainant had arranged for CSB to come to the School to install the latest JAWS software and to provide training to the Student and the VI Teacher, but according to the complainant, the School had “blocked” CSB from coming.
- It was agreed during a May 2010 IEP meeting that JAWS training would be provided for the VI Teacher, the complainant, and the Student’s case carrier; however, OCR

did not receive documentation from the District that the training occurred. A September 2010 IEP documented that the complainant requested to have the Student's home computer and JAWS updated.

- The VI Teacher was unsure which version of JAWS was installed in the computers in the VI room or on the Student's home computer. According to the VI Teacher, the JAWS program in the VI room was functional and was updated recently. The VI Teacher was not aware of differences between the current version and prior version and had not received training on any version of the JAWS program since 2009. Regarding the CSB visit, the VI teacher believed that it was arranged between CSB and the complainant, but did not recall anyone from CSB coming to the School.
- The District denies that the complainant ever requested that JAWS be installed on the computers in the Student's classrooms. IEP notes do not show that the complainant made this request at the Student's IEP meetings. According to the District, the Student had access to JAWS in the VI room, but she refused to go the VI room during the 2010-11 school year. The VI Teacher recalled working with the Student using JAWS during the 2009-10 school year, when the Student regularly participated in pull-out VI instruction.

#### Abacus and Math Window

- Math Window is a math teaching tool utilizing magnetic tiles, providing VI students with a tactile method for understanding and solving math problems.
- The complainant alleged that the VI Teacher was not knowledgeable about using Math Window. The complainant requested that the teacher receive training so she could instruct the Student on using this device.
- According to the District, it provided the Student with an abacus and Math Window in either October or November 2009 and these were available in the VI room and the Student's math classroom for the 2009-10 and 2010-11 school years. Additionally, the Student's aide reported to OCR that she saw the Student using Math Window on a daily basis and that although there was also an abacus for the Student to use, the Student preferred Math Window.
- The Student's September 2010 IEP indicates that the complainant requested that the Student have an abacus and Math Window at home in order to complete her homework and that the Student be provided with training on using the equipment. The IEP document indicates that the VI Teacher was going to order the additional equipment, and that CSB would be contacted to train all of the school staff and specialists on use of the devices. A February 2011 IEP shows that the complainant again indicated that the Student needed Math Window and the, VI teacher indicated that the Student needed an abacus.

- District staff acknowledged to OCR that it would be helpful if the School staff received more training on using VI devices, such as BrailleNotes, Math Window, abacus, and the JAWS program.
- In August 2011, the IEP team agreed to change the Student's placement to XXX located in Northern California. The Student began attending XXX on September 14, 2011. Both the complainant and Student are pleased with the Student's new placement. The District provides for weekly transportation between the Student's home and XXX.

The preponderance of evidence shows that the District's offer of FAPE included the following assistive technology and devices: Brailled instructional materials, BrailleNote, JAWS, an abacus and Math Window. With respect to the allegation that the District failed to provide Brailled materials in a timely manner, there was insufficient evidence to support a conclusion of noncompliance. The preponderance of the evidence shows that the District provided the Student with access to the curriculum in three ways: (1) the District's Braille Assistant transcribed textbooks and other classroom materials into Braille as needed; (2) the Student had access to audio CDs of the Biology and History textbooks; and (3) the Student's aide orally described pictures and graphs, and wrote down words written on the classroom board to be transcribed by the Braille Assistant.

OCR understands the preference to have text books in Braille directly from the publishers, but unfortunately, except for the Student's Math textbook, the District was unable to obtain them. Consequently, the District's Braille Assistant transcribed textbooks and other materials into Braille as needed, and the information obtained by OCR did not indicate that there were difficulties, delays, or other challenges in providing the Braille materials in a timely manner to the Student.

OCR also understands why the complainant requested a Brailist to accompany the Student to her classes. There are obvious drawbacks to the Student's aide copying down information from the classroom board and having them transcribed by the Braille Assistant at a later date. OCR notes that although the complainant requested a Brailist to accompany the Student to her classes, a Brailist was not included in the District's offer of FAPE. OCR further notes that disagreement with a recipient's offer of FAPE is a due process matter and generally beyond the scope of OCR's review.

OCR recognizes that the Braille transcription provided to the Student was not perfect. The Braille Assistant provided only a description of pictures and graphs in Braille, rather than Brailleing the pictures and graphs themselves; and as discussed above, the Student did not receive simultaneous transcription of information written on classroom boards. However, the preponderance of the evidence shows that the District successfully provided Brailled textbooks and other materials for the Student in a timely manner.

Lastly, with respect to the complainant's concerns regarding delays in ordering textbooks in Braille, the District appears to have addressed this issue by centralizing the

book ordering process so that textbooks for special education and general education students are ordered at the same time.

Regarding the remaining issues with respect to a new BrailleNote device, an updated JAWS program, an abacus and Math Window, the preponderance of evidence shows that there were significant delays in providing these assistive technologies to the Student. IEP documentation shows that the complainant requested an updated BrailleNote in September 2010, but was not provided one until May 2011 or later. Also at the September 2010 IEP meeting, the complainant told the IEP team that the JAWS program needed to be updated, but as of the District's written response to OCR in February 2011, the updated software was still pending.

OCR received conflicting information as to when the Student received an abacus and Math Window. The District told OCR that an abacus and Math Window were provided to the Student in October or November 2009, and District witnesses recalled seeing the Student using them in her Math class. However, IEP meeting notes contradict this information. The evidence shows that the complainant requested an abacus and Math Window for home use in September 2010 and the VI Teacher agreed to order the additional equipment; in a subsequent IEP meeting, six months later, in February 2011, the complainant again stated that the Student needed Math Window, and the VI Teacher added that the Student also needed an abacus. The IEP meeting notes suggest that the Student did not have access to Math Window and an abacus, at least for home use.

In addition to delays in providing the assistive technologies, the preponderance of evidence shows that the District conditioned the receipt of assistive technology upon signing a form that states that the IEP team could discontinue the authorization for home use if the device is lost, damaged, or destroyed due to negligence. This provision in the form is directly contrary to the requirements of Section 504 and Title II for the District to provide a FAPE. If a student's IEP team determines that an assistive technology is appropriate for the student given the student's disability, the District must continue to provide the technology even if the parent/student may have been at fault in damaging or destroying the device.

The preponderance of evidence also shows that there was a three-month delay in providing a Spanish translation of the assistive technology form to the complainant. The complainant requested a Spanish translation in February 2011, and the District was unable to explain why the Spanish translation was not provided until May 25, 2011. This compliance issue will be further addressed as part of Issue 3 below.

Based on the evidence obtained, regarding the individual Student issues, OCR concluded that there was insufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with respect to Issue 1. The Student is currently placed at the CSB and the complainant is satisfied with this placement. However, OCR found the District to be in non-compliance with Section 504 and Title II with respect to its delays in the provision of assistive technology and allowing an IEP

team to discontinue appropriate assistive technology for non-educational reasons. The District, without admitting to any violation of law, voluntarily agreed to address these areas as set forth in the enclosed resolution agreement. Specifically, the District has agreed to develop a plan to ensure that assistive technologies necessary to provide FAPE are provided to students in a timely manner, maintained and updated. Additionally, the District has agreed to provide training to staff on using assistive technologies and teaching students how to use the assistive technologies, to no longer allow IEP teams to remove assistive technology from a student's IEP if the assistive technology is damaged or destroyed, and to inform parents of the process for addressing problems or concerns they have with assistive technology devices.<sup>2</sup>

*Issue 2: Whether the District has a policy against the use of guide dogs.*

The Title II regulation at 28 CFR § 35.136 requires public entities to modify their policies, practices or procedures to permit the use of a service animal by an individual with a disability. A public entity may ask an individual with a disability to remove a service animal from the premises only if 1) the animal is out of control and the animal's handler does not take effective action to control it; or 2) the animal is not housebroken. The regulation at 28 CFR § 35.136 (d) requires a service animal to be under the control of its handler (e.g. harness, leash, voice control, signals or other effective means). If a public entity properly excludes a service animal under the regulation, it must give the individual with a disability the opportunity to participate in its service, program, or activity without having the service animal on the premises.

OCR's investigation showed the following:

- According to the complainant, she was interested in getting a guide dog for the Student. When she contacted a guide dog school, she was given some paperwork to be signed by the Student's OM teacher. When she brought up this matter at an IEP meeting, the OM teacher told her that guide dogs were prohibited at the School. She told OCR that she did not bring up this matter again.
- A review of the Student's IEP notes show that on February 12, 2009, the complainant inquired about the Student having a guide dog at school. The IEP

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<sup>2</sup> In reaching its conclusions in this matter, OCR was largely informed by existing guidance, including court precedents, pertaining to the question of what is a FAPE. OCR wishes to bring to the District's attention that the United States Department of Justice has recently filed a brief in the 9<sup>th</sup> Circuit questioning whether the FAPE standard is the correct standard to apply in deciding placement and service questions with regard to students with sensory impairments including low vision (LV) students. The Justice Department has argued that the generally more rigorous standards of Title II of the Americans with Disabilities Act should be the controlling standard. Nothing in this letter is intended to suggest that the position of the United States, in the future, should not be applied to questions such as those raised in this case or that OCR would reach the same conclusion in this matter had it used Title II as the controlling standard. OCR San Francisco is recommending that school districts in California remain current on these legal developments.

meeting notes show, “[The O&M] explained why this would not be possible.” There is no further discussion or elaboration on this topic.

- The District told OCR that in general, guide dogs are not provided to persons who are under 16 years old. Furthermore, students need to possess and demonstrate certain OM skills in order to be able to handle a guide dog, which according to the District, the Student did not yet possess. The District referred to the Student’s CSB assessment results, which stated that the Student did not demonstrate a good understanding of making whole, half, or quarter turns, use of directions, and other skills necessary for traveling; the CSB report was silent regarding the provision of a guide dog. In addition, the District’s March 2010 OM assessment report indicated that the Student had inadequate cane skills.
- According to the OM teacher, it is very rare for students under the age of 16 to have a guide dog. In the OM teacher’s opinion, it is more appropriate to investigate the use of a guide dog after a student graduates from high school, although he acknowledged that guide dog schools are in the best position to determine whether a student should receive a guide dog. When asked about the District’s policy on guide dogs, he indicated that he was not sure that the District had a policy. He stated that guide dogs were not previously welcomed in the school environment because they were a distraction to other students, although he believed that the District would allow a guide dog if it was essential for a student to have one. The OM teacher believed that the Student lacked the skills to use a guide dog.
- According to a District administrator, the District currently does not have a formal policy on service animals. According to the District administrator, the complainant never requested to bring a guide dog and the District never told her that guide dogs were not allowed at School and if a service animal provider had indicated that the Student qualified for a service animal, the District would have brought the matter up with the school Board and the Chief Academic Officer.
- The Student’s former aide recalled attending an IEP meeting where the complainant asked the OM teacher about having a guide dog for the Student. The aide remembered that the OM teacher told the complainant that the Student was not independent enough to use a guide dog.

Under Title II regulations, 28 C.F.R. §35.136, a public entity is required to modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

In the case at hand, the evidence is insufficient to establish that the District has a policy against students using guide dogs at in schools. The IEP documentation shows that the complainant brought up the possibility of getting a guide dog for the Student on February 12, 2009, and that the OM teacher explained “why this would not be possible.” The IEP documentation lacks further detail. The OM teacher believed that the Student did not possess adequate skills to handle a guide dog, but he deferred the ultimate

decision to the guide dog school. It is not a violation of the law for the OM teacher to express his professional opinion on whether the Student was a good candidate for a guide dog. However, it would be a violation of the law for the District to have a policy or practice of prohibiting service animals, or to lead parents, students or members of the community to believe that service animals are not welcomed or accepted at the School.

Based on the evidence obtained, OCR concluded that there was insufficient evidence to support a conclusion of noncompliance with Title II with respect to Issue 2. As a matter of technical assistance, however, OCR reminds the District that individuals with disabilities are not required to obtain the District's approval before bringing a service animal onto campus. Title II provides individuals with disabilities a right to be accompanied by service animals except in very limited circumstances such as when the service animal is out of control and the animal's handler does not take effective action to control it, or the animal is not housebroken. Absent these conditions, individuals with disabilities including students must be allowed to bring a service animal to school. Policies, procedures or practices that explicitly or implicitly lead a parent to believe that District pre-approval of the service animal is necessary violate Title II. When a parent requests the District to complete a form that is required by a guide dog school, the District should complete and return the form but may and should provide honest feedback and opinions if solicited on the form.<sup>3</sup>

*Issue 3: Whether the District denied the Parent the opportunity to participate meaningfully in the special education process by failing to provide oral interpretation and written translation of important information and documents in the Parent's primary language.*

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin" (35 Fed. Reg. 11,595). The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students.

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<sup>3</sup> Nothing in this technical assistance is intended to address the question of when a student or parent wishes to bring an animal to school and the animal does not meet the ADA regulatory definition of a service animal.

The May 25th memorandum states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. OCR analyzes this issue consistent with the U.S. Department of Justice (DOJ) “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (67 Fed.Reg. 41,455, June 18, 2002). Under the DOJ Guidance, the extent of a recipient’s obligation to provide language assistance to limited English proficient (LEP) individuals is determined by balancing four factors: 1) the number or proportion of LEP individuals likely to encounter the program; 2) the frequency with which LEP individuals come in contact with the program; 3) the nature and importance of the services provided by the program; and 4) the resources available to the recipient.

The complainant alleged that at the beginning of each IEP meeting, the School looked for an interpreter rather than having an interpreter pre-scheduled to attend the meeting and that the interpreters, because they were found at the last minute provided poor quality interpreter services. The complainant also alleged that the District failed to provide her with translated IEP documents in Spanish, despite her requests.

The investigation showed the following:

- During the 2010-2011 school year, the District’s total student enrollment was 19,803. Data on EL and FEP (Fluent English Proficient) students whose primary/native language is Spanish indicate that for the 2010-2011 school year 41.71% of the District’s students and nearly 50% of the School’s students are from families whose native/primary language is Spanish.<sup>4</sup> The complainant’s primary language is Spanish and she is limited English proficient. OCR used an interpreter service to communicate with the complainant.
- The District does not have written policies and procedures for responding to requests for interpreter and translation services. According to a narrative summary of its practices, the District indicated that non-English speaking parents have the right to an interpreter at all meetings and that the use of interpreters should follow certain guidelines, such as conducting a pre-meeting to determine roles and expectations, to review difficult concepts and specialized vocabulary, to determine how the translation is to take place (simultaneously, sentence by sentence, or successive translation), and to conduct a post meeting to review what worked and what needs to change next time. Interpreters must possess proficient listening and speaking skills in both English and the LEP parent’s primary or home language. Also, non-English speaking parents must be provided written documents (all forms and parental rights) in their native language and be informed of their right to request

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<sup>4</sup> See, [www.cde.ca.gov/dataquest](http://www.cde.ca.gov/dataquest).

translation of IEPs, summary reports, assessment reports, and psychological reports in their native language.

- According to the District, certified interpreters and translators are available through the District's Translation Unit. Teachers are supposed to look at the home language survey to determine if interpreter and/or translator services are needed by parents. It is the responsibility of a student's case carrier to know when a parent may need these services. In practice, the School relied on bilingual site staff for providing interpreter services, rather than using the District's Translation Unit.
- The Student's case carrier stated that parents can request translation and interpreter services by completing a form on the District's website. OCR located a separate form for requesting interpreter and translation services on the District's website, along with instructions, guidelines, and frequently asked questions. OCR found the information and the forms available in English only.
- The Student's case carrier also stated that parents can request interpreter and translation services from case carriers. She stated that she asks her students whether their parents need the service, and she calls the parents to confirm. According to the case carrier, the complainant speaks English fluently; the case carrier was not aware that the complainant had a language barrier which prevented the complainant from participating in the Student's special education process. Another staff member who oversaw the VI program described the complainant as bilingual.
- According to the District, it is the responsibility of case carriers to arrange for an interpreter for a LEP parent for IEP meetings. When a parent requests a translation of IEP documents, this should be noted in the IEP document itself. If parents are dissatisfied with the translation or interpreter services, they should inform the case carrier; if their concern is not resolved, they can inform a school administrator and the District's special education department.
- According to the District, the complainant never indicated dissatisfaction with the quality of the interpreter and translation services.
- In a February 13, 2011 letter to a District administrator, the complainant complained about the quality and availability of interpreter and translation services provided by the School. The letter states that the complainant required an interpreter at IEP meetings because the English that was spoken at the meetings was mainly academic and beyond her comprehension. The letter stated that the complainant requested interpreters, but many times, the interpreters that were used at the IEP meetings were not fluent in English. Furthermore, the letter stated that at every IEP since 2007, the complainant requested a written translation of the IEP into Spanish, the District had not provided her with any translated IEPs.

- After receiving the letter, the District administrator met with the complainant to discuss the complainant's concerns in three two-hour meetings that included an interpreter. As a result of the complainant's concerns, the District changed the Student's case carrier.

#### Translation of Specific Documents

- According to school site staff, very few parents (about 1%) request translated documents and during the 2010-11 school year, only the complainant had requested that an IEP be translated.
- The Student's prior case carrier stated that the complainant always requested that IEPs be translated into Spanish. The prior case carrier recalled that the complainant complained about IEPs not being translated, and that she also requested interpreters from the District's Translation Unit because the complainant preferred someone who was not from the School.
- OCR spoke with a District staff member who works regularly with LEP parents and served as an interpreter at three of the Student's IEP meetings. She was unsure how parents are informed of their right to request a written translation of an IEP and other special education documents; she did not believe that parents were informed of this information verbally, but believed that it might be included in the parents' handbook. She indicated that every parent with whom she worked, including the complainant, wanted their children's IEPs translated into Spanish.
- According to the District, the complainant made only two requests for translated documents, which the District provided. The first was the CSB assessment report; the second was the January/February 2011 IEP. The complainant acknowledged that she received both of these documents as well as a March 2010 translated IEP. According to the complainant, the translation of the January/February 2011 IEP was very poor, and the meaning of certain words appeared to have been translated incorrectly as the document is difficult to understand
- In addition to the two IEP documents that were translated, the District also translated the IEP documents from an addendum meeting held in August 2011.
- OCR's bilingual staff compared the English IEP documents with the Spanish translation provided to the complainant. OCR noted that the Spanish translation contained several errors that made portions of the translation difficult to discern, and English words that were not defined or translated into Spanish. In addition, OCR found that the Spanish translation of the August 2011 IEP documents were missing significant portions, including pages containing a listing of the Student's approved accommodations and related services, as well as almost two pages of IEP meeting notes.

#### Interpretation at IEP Meetings

- Most of the Student's IEP documents show the name or signature of the staff member who served as the interpreter.
- OCR interviewed four individuals who served as an interpreter at the Student's IEP meetings. Three of the individuals worked for the School, while one individual worked for the District's Translation Unit. The three School staff members stated that they were not required to demonstrate any particular level of English/Spanish proficiency before they were asked to interpret at IEP meetings, and they were not provided with any training regarding IEP terms or procedures, how to interpret at IEP meetings, or District guidelines for providing interpreter services.
- The interpreter from the District's Translation Unit stated that he received training in interpreting and translating in Mexico City; he received further training applicable for IEP meetings. He stated that he was required to demonstrate language proficiency by translating a paragraph of text from Spanish to English, translating vocabulary, and conducting an interview in Spanish.
- OCR's bilingual staff reviewed a recording of the IEP meeting from January, 2011. The recording shows that at the beginning of the meeting, the team spent time looking for someone to serve as the interpreter and found a School staff member. The interpreter failed to interpret everything that was being said in English, failed to ask speakers to pause, in order for her to have time to provide the interpretation, provided vague summaries rather than word for word interpretation, and focused primarily on one or two English speakers and failed to interpret comments made by other individuals and conversations occurring among the IEP team members.

The District has an obligation to ensure meaningful access to its programs and activities to LEP parents. Specifically, under Title VI, the District has an obligation to adequately notify national origin-minority group parents of school programs and activities that are called to the attention of other parents and to ensure that LEP parents are provided with oral interpretation and written translation of important information and documents in the parent's primary language to ensure that they can meaningfully participate in their child's special education process.

In the case at hand, information obtained by OCR indicated that the District's existing practice does not ensure that LEP parents have meaningful access to important information about their child's education.

The District appears to have no policies and procedures on requesting and providing interpretation and translation services to LEP parents. The District lacks a process for accurately identifying LEP parents. The District relies primarily on a student's case carrier to determine when a parent needs an interpreter for IEP meetings and to arrange for it. While the District has a Translation Unit, evidence shows that the School provided interpreter services through site-based bilingual staff who had no training on special education terminology and procedures or how to interpret at IEP meetings. Additionally,

site staff who were used as interpreters were not required to demonstrate language proficiency before serving as interpreters.

With respect to providing translated documents, the District lacks a system for consistently notifying parents that they are entitled to receive translated IEP documents, and to ensure that parental requests are actually fulfilled in a timely manner. OCR is not persuaded by the District's statement that the complainant asked for only two documents to be translated. Instead, OCR found credible the complainant's statement that she regularly requested translated IEP documents, which she did not receive. OCR's credibility determination is based on the testimony of the complainant's prior case carrier and school staff. Furthermore, as mentioned under Issue 1, OCR learned that it took nearly three months for the District to provide the complainant with a Spanish version of the one-page assistive technology form, and the District offered no explanation for the delay. This incident supports OCR's finding that the District lacks a systematic approach to ensure accountability and a timely response to requests for translation.

With respect to the quality of the interpreter and translation services that were provided to the complainant, the most compelling evidence is the recording of the January 2011 IEP meeting and the translated IEP documents that OCR reviewed. The recording clearly demonstrated inadequacies with the interpretation that was provided. The translated IEP documents, especially from the August 2011 IEP meeting, were missing significant portions that contained important information such as the Student's accommodations and related services, as well as pertinent IEP meeting notes.

OCR concluded that there was sufficient evidence to support a conclusion of noncompliance of Title VI of the Civil Rights Act of 1964 by the District with respect to Issue 3.

In addition to addressing the areas of non-compliance discussed above relating to Issue 1, the enclosed resolution agreement also addresses Issue 3. Specifically, the District, without admitting to any violation of law, agreed to create and implement a plan or administrative guidelines for its staff that outlines the procedures for the provision of oral interpreting and written translation to parents/guardians with limited proficiency in English during all special education processes; disseminate information regarding the plans, procedures, or administrative guidelines to parents/guardians; and train relevant administrators and staff regarding the plans, procedures, or administrative guidelines. The resolution agreement, when fully implemented, will resolve the issues in this complaint.

OCR will monitor the District's implementation of the resolution agreement. This concludes the investigative phase of OCR's resolution process. OCR is informing the complainant of these findings by concurrent letter.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of

individual cases. Letters of findings are not formal statements of OCR policy and they 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.

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.

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.

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 wishes to thank you and the District staff for your assistance and cooperation during the course of this investigation. If you have any questions, please contact Apryle Stanley, Investigator at (415) 486-5559.

Sincerely,

/s/

James Wood  
Team Leader

Enclosure

Cc: XXXXX XX XXXXXXXX, Esq.