



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

February 3, 2016

Dr. Brian McDonald
Superintendent
Pasadena Unified School District
351 S. Hudson Ave.
Pasadena, CA 91101

(In reply, please refer to case no. 09-14-1273.)

Dear Superintendent McDonald:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Pasadena Unified School District. The Complainant alleged that the District discriminated against the Student¹ on the basis of disability by failing to provide the Student with large print text. With regard to this allegation, OCR investigated the following issues: 1) whether the District failed to provide the Student with a free appropriate public education (FAPE) by failing to implement the Student's Individualized Education Program (IEP); and 2) whether the District failed to provide the Student with effective communication.

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

OCR gathered and reviewed documents from the Complainant and the District and interviewed the Complainant and District representatives. OCR found sufficient evidence to support a

¹ OCR previously provided the Recipient with the identity of the Complainant and the Student. We are withholding their names from this letter to protect their privacy.

conclusion that the District failed to provide the Student with a FAPE and effective communication by failing to provide the Student with large print text as alleged.

The applicable legal standards, the facts gathered, and the basis for OCR's determination are summarized below.

Legal Standard for FAPE and Effective Communication

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. 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 school districts know 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.² As noted in joint guidance issued by the OCR, OSERS and the U.S. Department of Justice, this obligation is in addition to the requirement that school districts make FAPE available if the student is eligible.³ Under Title II, districts must provide appropriate "auxiliary aids and services" where necessary to provide effective communication;⁴ 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

² 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."

³ See, "Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools." at Question 5, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>.

⁴ 28 C.F.R. § 35.160(b)(1).

service requested by the student with the disability when determining what is appropriate for that student.⁵

The Title II regulations require that when a public school is providing auxiliary aids and services that are necessary to ensure 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.⁶ 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. Additionally, the auxiliary aid or service must be provided in a timely manner. That 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. Where the student or his or her parent(s) requests auxiliary aids and services for the student under Title II, the appropriate aids and services must be provided as soon as possible, even if the IDEA’s evaluation and IEP processes are still pending.⁷

School districts should provide auxiliary aids and services that would allow the student to go through the material independently, at his own pace, and with the ability to revisit passages as needed.⁸

School districts should provide auxiliary aids and services that would allow the student to go through the material independently, at his own pace, and with the ability to revisit passages as needed.⁹ A District must ensure that it meets both its FAPE obligations as well as its obligation to provide effective communication under Title II and that none of the student’s rights under either law are diminished or ignored. If the special education and related services provided as part of FAPE are not sufficient to ensure that communication with the student is as effective as communication with other persons, the Title II obligations have not been met.¹⁰

Factual Background

⁵ 28 C.F.R. § 35.160(b)(2).

⁶ 28 C.F.R. § 35.160(b)(2).

⁷ See, “Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools.” at Question 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ See, “Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools.” at pp 1-2 and Question 10.

- According to the Complainant, the District failed to provide the Student with large print materials while she was in high school.
- At the time OCR initiated the investigation, the Student was seventeen years old and attended Marshall Fundamental Secondary School (the School). During the 2013-2014 school year, the Student was a Junior at the School. The Student graduated from the School in June 2015.
- The District had identified the Student under the IDEA as a student with a Specific Learning Disability and a visual impairment who required large print texts and exams.
- The Student's March 15, 2011 IEP notes stated that the Student's disability "has necessitated large print books. The doctor has verified this need."
- District documentation of a May 31, 2012 IEP meeting attended by the school principal, the special education teacher, the school psychologist, the school nurse, and the speech therapist confirmed the Student's continued need for large print text for all written materials and standardized tests
- District documentation of a May 21, 2013 IEP meeting attended by the Student's parents, APE Teacher, Program Specialist, case carrier, speech and language pathologist, school administrator, and the Student's Spanish teacher reaffirmed the Student's need for large print text for all written materials and standardized tests. The documentation shows that the Complainant asked the IEP Team if large print texts for the Student would be forthcoming. In response, the "Department Chair" stated that the Student did not qualify for large print texts, but the Program Specialist offered to look into the issue.
- District documentation of a February 25, 2014 meeting attended by the Complainant, special education teacher, parent advocate, Program Specialist, case carrier, speech and language therapist, school nurse, and the Student's English teacher, again reaffirmed the Student's need for large print text for all written materials and standardized tests.
- In a March 20, 2012 the Complainant filed a complaint with CDE which alleged that the District failed to provide the Student with large print texts and tests. CDE's MMM XX, 2012, letter of findings stated that the District "did not implement the Student's IEP as soon as possible, with regard to large print tests and large print text books. The District is out of compliance." The letter gave the District until June 5, 2012, to ensure compliance, and requested a plan for future compliance.

- In OCR Case # 09-11-1054, which was filed by a different complainant on behalf of another student, OCR found the District out of compliance with regard to the provision of assistive technology, including the provision of texts in alternative formats. As part of the Resolution Agreement reached in that case, which OCR is still monitoring, the District agreed to “develop a plan or procedure to ensure that assistive technologies that are necessary for the provision of a FAPE or to comply with Title II of the ADA, are ordered, received, and given to students with disabilities in a timely and expeditious manner.”
- In response to OCR’s May 9, 2014 data request for this case, the District provided OCR with information related to the Student’s special education program but provided no documentation that showed that the District provided large print materials to the Student.
- The District does not dispute that the Student’s IEPs required the District to provide large print text to the Student. Additionally, the District acknowledged to OCR that purchase orders were placed too late for the Student to receive large print texts in a timely manner. Additionally, during the Student’s senior year, the District indicated that no purchase orders were placed for the Student. The District acknowledged that the Complainant continued to ask for the large print text on behalf of the Student while she was enrolled in the School.
- According to the District, the provision of large print text books to the Student would have cost the District between \$3000-\$5000 for each of the four years the Student attended the School.
- According to the Complainant, because of difficulties related to not having large print text, the Complainant, who is a public school teacher, spent approximately 16 hours per week helping the Student with her school work. According to the Complainant, the Student failed to develop independent study skills because she heavily relied on the Complainant to help her with the printed information that was otherwise inaccessible to her.

Summary and Resolution

Based on the information above, OCR determined that the preponderance of the evidence supports a conclusion that the District failed to comply with Section 504, Title II and the regulations. The District acknowledged that it did not provide the Student with large print texts in a timely manner during her enrollment in the School. Therefore, OCR concluded that the District failed to implement the Student’s IEP and thus denied the Student a FAPE in violation of Section 504 and Title II.

Additionally, OCR concluded that the District failed to provide the Student with effective communication in violation of Title II. Under Title II, unless the District could show that the provision of large print text would have resulted in a fundamental alteration in the nature of the District's service, program, or in undue financial and administrative burdens, the District was obligated to give "primary consideration" to the auxiliary aid or service requested by the Student which was large print text. In this case, the District provided no evidence of a fundamental alteration or undue financial and administrative burden. Indeed, the District had determined that large print text was necessary to provide the Student with a FAPE. Although the Department Chair declared that the Student no longer qualified for large print text at the Student's May 21, 2013 IEP meeting, there was no evidence cited at the meeting that the Student's vision had changed and a subsequent IEP reaffirmed the Student's need. Large print text would have allowed the Student to go through her school material independently, at her own pace, and with the ability to revisit passages as needed. Because she did not have large print text, the Student became dependent on the Complainant's assistance to study the material.

Conclusion

In order to resolve the compliance issue in this case, the District entered into the enclosed resolution agreement. Under the agreement, the District, in an amount not to exceed \$8000, will pay for the services of a certificated educational therapist selected by the Complainant to determine if the Student needs educational therapy services and to provide the Student with needed services which may include college coaching to assist the Student in developing study and self-advocacy skills and to support the Student in successfully transitioning to the community college setting and such other services as the therapist may recommend.

Based on the commitments made in the enclosed resolution 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 resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the Recipient is in compliance with the statute(s) and regulations at issue in the case.

This concludes the investigation of this complaint. OCR's determination in this matter should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the Recipient 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 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Gloria Guinto (gloria.guinto@ed.gov) at 415-486-5519.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure