



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

July 8, 2015

Dr. Duane Coleman
Superintendent
Oceanside Unified School District
2111 Mission Avenue
Oceanside, California 92058

(In reply, please refer to case no. 09-14-1441.)

Dear Superintendent Coleman:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Oceanside Unified School District (District). The Complainant¹ alleged that the District discriminated against her daughter (Student) on the basis of her disability. The issues OCR investigated were:

1. Whether the District failed to provide the Student with a free appropriate public education (FAPE) by failing to provide the Complainant with procedural safeguards when it denied the Complainant's request for an evaluation for special education services and when it did not give her an opportunity for an impartial hearing under Section 504 of the Rehabilitation Act of 1973 after the Complainant contested the outcome of the Student's manifestation determination.
2. Whether the District denied the Student a FAPE by failing to evaluate her in all areas of suspected disability.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability in certain public entities. The District is subject to the requirements of Section 504, Title II and their implementing regulations because the District receives Federal funds and is a public education system.

¹ OCR notified the District of the identity the Complainant and the Student when the investigation began. We are withholding their names from this letter to protect their privacy.

OCR gathered information through interviews with the Complainant and District staff members. OCR also reviewed documents provided by both parties. Based on the evidence, OCR concluded that the District was not in compliance with Section 504 and Title II and their implementing regulations with regards to these allegations. OCR shared its findings with the District and discussed steps that the District needs to take to address the areas of noncompliance. On July 1, 2015, without admitting to any violation of law, the District signed the enclosed Resolution Agreement which will address the issue of noncompliance once it is fully implemented. The applicable legal standards, facts gathered during the investigation, and the reasons for our determination are summarized below.

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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), 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.

Finally, Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Our investigation showed the following:

2013-2014 School Year (6th grade)

- During the 2013-14 school year, the Student attended a District middle school for the sixth grade. The Student was previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and had a Section 504 Plan in place which was developed in May of 2013 when she was in the fifth grade. The Plan states that the Student has a history of inconsistent academic, social, and behavioral performance related to her ADHD. Socially, the Student has maintained appropriate friendships during the fifth grade and gets along with her friends most of the time. Emotionally, the Student continues to progress and demonstrate better coping skills. Sometimes she starts the day off visibly upset, and on these days she appears less focused and less motivated to participate and engage in instruction and assigned tasks. Academically, the Student is proficient in reading, at the lower end of proficiency in math, and at the lower end of proficiency in writing. The quality of her work varies depending on her focus, effort and mood, and these factors impact her grades. She is not proficient in science and social studies and has fallen behind in the content.
- The accommodations listed in the Student's Section 504 Plan are: preferred seating and careful grouping; alternative quiet spot in room as an option; prioritize list of assignments on board; provide two to five minute warnings in class to help with task completion; allow opportunities for movement and leadership. To address her emotional and behavioral needs, the Section 504 Plan states that clear expectations and limits will be given to the Student so that she understands the consequences of her choices. The Complainant consented to the Section 504 Plan by signing it on June XX, 2013.
- The Complainant told OCR that the Student has a hard time making friends and that other students bully her because she has social and behavioral issues. The Student's discipline record shows that on December XX, 2013, the "Student walked by a group of students and said the word 'puto' which is a derogatory word in Spanish." The Student received lunch detention for this incident. On December XX, 2013, the Student posted mean comments about girls on her Facebook page, which led to an argument on the school bus. The Student was counseled on school expectations to address this incident.
- On December XX, 2013, the Complainant e-mailed the Assistant Principal and informed him that the Student had behavioral issues while she was in elementary school and that she would like her to be able to get along with other students and express herself in a

- nonviolent way.² In the e-mail, the Complainant requested that the District evaluate the Student to see if she qualified for special education services.
- On December XX, 2013, the School Psychologist e-mailed the Complainant and informed her that based on a review of the Student's records, the District decided not to evaluate the Student for special education services because: the Student did not qualify for special education at her elementary school; her statewide testing consistently was within the basic to proficient range; and she had a 3.5 GPA. The e-mail also stated that "it appears that the greatest area of difficulty is more related to her social emotional and behavioral development, but it is not significantly impacting her academic progress at this time." The District did not provide the Complainant with information about her due process rights in the event she disagreed with this decision.
- On December XX, 2013, the Complainant sent another e-mail to the School Psychologist reiterating that she would like her daughter assessed for special education.
- On December XX, 2013, the Complainant sent an e-mail to the School Psychologist stating that she would like the Student's Section 504 Plan amended to include transportation services for her and to have the Plan address the bullying she was experiencing from her peers. The School Psychologist e-mailed the Complainant back telling her the Counselor will contact her to schedule a Section 504 meeting.
- On January X, 2014, the School Psychologist e-mailed the Complainant to tell her that a student study team (SST) meeting was scheduled for January XX at 2:00 PM³ with the School Psychologist, Counselor, Teacher and an Administrator to address the Complainant's concerns. The Complainant responded by e-mail stating that she was unable to attend the meeting but would e-mail her input after the meeting took place. The Complainant also stated that the Student's behavior and development are her concerns and asks when the District will test the Student. Later that day, the School Psychologist e-mailed the Complainant to inform her that the District is responding to her testing request by meeting as SST within 15 days of her written request. The Complainant responded by e-mail to state that she cannot attend the meeting because

² The Student's records showed that the Student was four years old when she was diagnosed with ADHD. The District developed a Section 504 Plan for the Student when she was in kindergarten due to her disruptive behavior in the classroom. The Student was also suspended three times for behavioral issues. When the Student was in first grade, she was suspended seven times for physical aggression and disruption. The Student was evaluated and qualified for special education services under Emotional Disturbance, but her IEP was never implemented because the Complainant did not sign the IEP indicating consent. During the third grade, the Student was evaluated for special education services again. At that time, the evaluation determined that the Student did not qualify for special education services under Emotional Disturbance, Learning Disability or Other Health Impaired. The evaluation notes mention behavior issues, but because the Student tested in the average range cognitively, the team recommended counseling and a Section 504 plan.

³ The e-mail states the SST meeting was scheduled for January XX, 2014, however, the records provided by the District state that the Student's SST meeting was held on January XX, 2014.

she is caring for her infant daughter. The School Psychologist informed her in another e-mail that she can participate in the SST meeting by telephone.

- On January XX, 2014 the District convened an SST meeting. According to the District, the Complainant did not attend. The District did not explain why it failed to hold a Section 504 team meeting in response to the Complainant's request.
- On January XX, 2014, a "virtual SST meeting" was held for the Student where the Complainant and Teacher provided their input about the Student by e-mail. The SST notes state that the Complainant is concerned about the Student's impulse control, outbursts, and inability to sustain relationships. The notes also state that the Complainant is requesting a special education evaluation. The team, however, decided that the Student did not need to be evaluated based on a review of records, a prior interview with the Student and input by the Complainant and the Teacher. The Complainant did not sign the SST notes. Again, the District did not provide the Complainant with information about her procedural safeguards.
- On January XX, 2014, the Complainant exchanged a number of e-mails with the Counselor. In the e-mails, the Counselor asks the Complainant for the Student's Medi-Cal information so that she can submit an application for counseling for her at a children's psychiatry office. The Complainant responds to the Counselor by e-mail and informs her that she did not authorize outside counseling for the Student. She also sent another e-mail to the Counselor informing her that another student bullied the Student by calling her a "spider monkey."
- On January XX, 2014, the Student was recommended for expulsion for brandishing a knife at another person at school. The Student was suspended from January XX to February X, 2014. The Complainant told OCR that had the District evaluated the Student for behavioral issues, as she previously requested, the Student would not have engaged in the misconduct.
- On January XX, 2014, the Complainant e-mailed the Student's Medi-Cal information to the Counselor so that she could be referred to a children's psychiatry office.
- On January XX, 2014, a Section 504 manifestation determination meeting was held with the Assistant Principal, the School Psychologist, Counselor, and School-Based Resource Teacher. The Complainant participated in the meeting by telephone. The notes from the meeting state that the team reviewed the Student's discipline records, SST notes and her current Section 504 Plan dated May 2013. The notes also state that the team determined that the Student's disability did not impact her ability to understand that it was not appropriate to bring a knife to school and brandish it. The notes further state that the team reviewed the specific details of the event and that "in none of the students' statements did it say that they told the Student to bring the knife to school."

The Complainant, however, felt that the Student brought the knife to school because she was told to do so by other students.

- During the manifestation determination meeting, the Complainant requested a “psychiatric evaluation” for the Student. The notes from the meeting state that the School Psychologist clarified to the Complainant that a School Psychologist does not provide a diagnosis nor do they provide psychiatric evaluations. The notes also state that the “Parent believes that the school did not take precautionary action. Parent requested a description of the role of the School Psychologist and information on the purpose of a functional analysis assessment. Parent agrees to open an evaluation plan for special education evaluation. School Psychologist will send home the evaluation plan.”
- The Student’s Section 504 Manifestation Determination Form states the following:

Manifestation Determination

- A. Did the student's disability substantially prevent the student from understanding the impact and consequences of the behavior subject to disciplinary action? “No. The act of bringing a knife to school is not an impulsive or hyperactive act.”
- B. Did the student's disability substantially impair the ability of the student to control the behavior subject to disciplinary action? “No. Bring a knife and brandishing a knife is not impulsive or hyperactive- not result of ADHD. It was planned.”
- C. Was the behavior subject to the disciplinary action the result of an inappropriate placement? “No. Student earned at 3.0 on semester report card.”

Conclusion

- A. Behavior is a manifestation of the handicap (thus student should not be referred for further discipline). “No. School team believes ‘no.’ ~~Parent disagrees.~~ Parent agrees act was NOT manifestation of [the Student’s] disability (ADHD) - see comments on definition below.”
 - B. Student may be disciplined in accordance with the District’s policies and procedures for disciplining students without disabilities. “Yes. Parent agrees with the definition of impulsive as given by School Psychologist. Parent disagrees with ‘why’ [the Student] did what she did.”
- In a letter dated January XX, 2014, Assistant Principal sent the Complainant a packet containing the following items:
 - A copy of the Section 504 Procedural Safeguards

- A copy of the Section 504 Manifestation Determination (for signature)
 - Section 504 Manifestation Determination meeting notes
 - Student Success Study Team (SST) notes
 - A copy of discipline records
 - A printout of a role of a School Psychologist
 - A printout of the summary of the purpose of a functional analysis assessment
 - An evaluation plan for special education services and support (for signature)
 - A Copy of Procedural Safeguard for Special Education Services
 - Behavior Assessment System for Children Second Edition (BASC-2) parent rating Form
- The Complainant did not sign the Section 504 Manifestation Determination form. The Complainant told OCR that she disagrees with the team's determination and believes that the Student's misconduct was a manifestation of her disability. OCR also reviewed the Section 504 Procedures and found that it did not provide any information as to how a parent could contest the outcome of a manifestation determination meeting.
 - On February X, 2014, the Complainant sent an e-mail to the District stating:

To all parties: I'm sending this e-mail in regards to the manifestation hearing that took place on January XX, 2014 regarding my daughter... My daughter brought a knife to ...Middle School and is now up for expulsion. I expressed to [the Assistant Principal] that I did not want the notes from the meeting distributed to anyone that was not in attendance until I have viewed them for any misrepresentations, but I have yet to receive a reply. I also messaged [the Assistant Principal] to inform him that I would like my daughter to receive the same treatment as a special education student, and not a 504 student because I made a request to have a special education assessment regarding my daughter's behavior and also expressed concerns about developmental disabilities prior to this incident, but I was denied twice. According to 20 U.S.C Section 1415(k) (5); 34 CFR section 300.534(b) the District is deemed to have knowledge of my child disability the day I requested the special education evaluation and was denied.

- On February X, 2014, the Complainant sent an e-mail to the Director of Student Services stating in part:

I am sending this e-mail because of an incident that resulted in my daughter [the Student] being put up for expulsion. Before the incident took place I sent a notice requesting that my daughter be evaluated for special education for emotional and developmental reasons. The school denied the request on three separate occasions. According to the law a student cannot be expelled if the behavior was due to the identified disability or if the school had knowledge of the disability. The law also says that if a parent request that evaluation is done before an incident occurs and the school fails to give the evaluation the school is deemed to (k)now that the child has a disabling condition. Therefore the school is at fault for not implementing an IEP behavior plan

because the(y) denied the testing. I would like the mishap further investigated a written statement that the school is at fault and my child will not be expelled after her testing, which school is offered after the incident. I would also like my child be transferred to ... Academy immediately so that she can get the appropriate care that she needs. She will also need the District to provide transportation to the school. All testing with be put on hold until this has been fulfilled.

- On February X, 2015, the Director of Student Services sent a responding e-mail to the Complainant:

After speaking with [the] Director of Special Education, I want to clarify the process for you.

1. The team will be working with you to conduct her daughter's assessment to determine eligibility for special education services.
2. Once assessment is finalized, based upon the results, the team will convene an IEP meeting to determine whether or not your daughter meets eligibility criteria for special education services.
3. If your daughter meets eligibility criteria, the team, including you, will meet to conduct a manifestation determination during which, decision will be made as to whether or not the behavior was a result of the identified handicapping condition.

At this time we will not be moving ahead with any disciplinary actions. The goal is to assess [the Student] to see if she does indeed meet eligibility for special education services.

- The same day, the Complainant sent the Director of Student Services the following e-mail:

The school is still responsible for the behavior because they did not give her the proper testing when asked, the testing that was offered after the fact does not dismiss their negligence. [The Student] must be treated as an IEP student. [T]esting will not go forward until she receives special education services. She can either stay put or she can go to ... Academy. If the school or district refuses this we need to get a hearing scheduled ASAP.

- The Complainant told OCR that it is her understanding that the District must treat the Student as a special education student because she requested the evaluation before the misconduct. The Complainant also stated that her understanding of the law is based on information she found on the internet which states:

I believe my child has a disability which caused his misbehavior, but the school district has never evaluated him for special education. Do the rules regarding the discipline of special education students apply to him?

The rules apply if the district "has knowledge" that your child has a disability. There are three situations in which a district will be "deemed" to have this knowledge (if your child is not already identified as a special education student) and in which case he will be protected by the special education disciplinary rules. These include: (1) when a parent has expressed concern in writing, before the student's misbehavior, to a school administrator or the student's teacher that he needs special education; (2) when a parent had requested, before the misbehavior, that the student be evaluated for special education and the District did not do so; and (3) when a teacher or other school personnel, before the misbehavior, had expressed specific concerns about a pattern of behavior directly to the special education director, or other supervisory personnel. [20 U.S.C. section 1415(k) (5); 34 CFR section 300.534(b).]

- The Complainant also stated to OCR that she read the District's Special Education Rights of Parents and Children Under the Individuals with Disabilities Education Act - Notice of Procedural Safeguards, which states that two questions need to be addressed during a manifestation determination meeting. The two questions are: 1) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or 2) if the conduct in question was a direct result of the school district's failure to implement the child's IEP. The Complainant told OCR that because she requested an evaluation for the Student before the misconduct, the District is deemed to have knowledge about the Student's disability and therefore must treat her as a student who qualifies for special education services. The Complainant further believes that because the District did not have an IEP for the Student, then question #2 that is listed in the District's Procedures shows that the Student's behavior was a direct result of the District's failure to implement an IEP for her. Thus, because the misconduct is a manifestation of her disability, the District cannot discipline the Student. The Complainant stated to OCR that the District denied the Student her due process and violated her civil rights because they did not properly conduct the manifestation determination by failing to address question #2 during the meeting.
- On February XX, 2014, the Director of Student Services e-mailed the Complainant to inform her that the District cannot assess the Student until she returns the signed assessment plan.

The Complainant sent an e-mail to the Director of Student Services that same day stating the following:

I'm waiting for your answer regarding the school's failure to provide services to my daughter. This is the first step of the manifestation that was not considered as part of the law. The evaluation will not be signed until this procedure is implemented as it is my daughter's right. We are also reaching the ten-day mark and placement has not been agreed on. Home hospital will not work so we need to consider another alternative

other than ... ASAP. If these things cannot be agreed upon we need to go to start the hearing process ASAP.

- On February XX, 2014, the Complainant e-mailed the District stating:

After our phone conference today I think that we need to have a hearing. My daughter has been out of school way to[o] long and the proper protocol is not being followed according to law. This is a federal mandate not a local collaboration to cover up your wrongs. Can you please give me the protocol set in place for having a hearing scheduled so that I can get my daughter the education that we are hard and long for. I refuse to be denied civil rights or my daughter.

- The Director of Student Services responded to the Complainant later that day stating:

There is no hearing other than the Expulsion Hearing, which is currently on hold due to the request for assessment. We are still not clear on what the "Hearing" is that you are requesting. We are not attempting to cover up any wrongdoing. We are attempting assess [the Student] to enable us to identify any area that she may be eligible for services. Until you sign the assessment forms, [the Student] cannot be assessed, nor does she meet eligibility for special education services. We have offered education for your daughter in the interim. I am not sure why the home hospital does not meet your needs, as my understanding as to why you are not able to come to meetings is that you are home with your new baby.

- The Complainant responded to the Director of Student Services in an e-mail that states in part:

My child care situation has nothing to do with this. Home hospital does not work for my schedule. The focus is [the Student] not me, so let's keep that in mind. I want a hearing because I feel my daughter's rights are being violated. I will call the school board and see if they have knowledge of this hearing and they can get back to both of us...

- On March X, 2014, the Complainant e-mailed the Associate Superintendent of Educational Services stating:

My daughter ... was suspended from school, and later put up for expulsion for bringing a knife to school. Prior to the incident I voiced my concern to the school via e-mail requesting that my daughter be evaluated for special education services. I was denied this request even though my daughter and other students were involved in cyber bullying, and incidents on the bus. What I need now is placement and transportation for my daughter. I have requested information from [the Director of Student Services] on what I need to do to have a hearing regarding my daughter's rights, but I have not heard back from her. I also spoke to your secretary about the situation, and I have not gotten a

response. Can you please assist me with getting my child back in school or refer me to someone who can.

- That same day, the Associate Superintendent of Educational Services responded to the Complainant by e-mail stating:

The latest information I received about your situation is that you requested your daughter to be assessed, but you haven't signed the forms for us to begin testing her. In the meantime your daughter is to remain on Home Hospital to meet her academic needs. There is no other "hearing" process outside of the Expulsion Hearing. The hearing has been delayed until your request for assessment has been addressed. I know this is not the answer you wanted but unfortunately due to the seriousness of the situation that occurred at school there are no other options I can offer you at this time.

- On March X, 2014, the Special Education Coordinator sent a Prior Written Notice letter to the Complainant to respond to the Complainant's December XX, 2013 request for special education evaluation. The letter states that the assessment plan was sent to the Complainant on January XX and February X, 2014 and that a telephone conference was held with the Complainant, Director of Student Services, Director of Special Education, and the Program Specialist. During the telephone conference call, the Complainant declined the evaluation for the Student. Since the Complainant did not consent to the evaluation, the District decided to proceed with the expulsion process. The letter also states a copy of the procedural safeguards under Section 504 and IDEA was enclosed with the letter

- On March X, 2014, the Director of Student Services e-mailed the Complainant and stated:

I am sorry were unable to talk over the phone this morning. I was calling to let you know that we will be moving ahead with the expulsion hearing. You will receive information the mail regarding the date and time of the hearing.

- On March X, 2014, the Complainant e-mailed the District requesting a due process hearing. The Director of Special Education responded by sending an e-mail to the Complainant stating, "Due Process is a special education component. Until you sign the assessment documents and [the Student] meets eligibility requirements for special education, there is no Due Process to schedule."
- In a letter dated March XX, 2014, the Complainant told the Superintendent, "I sent an e-mail requesting a due process hearing on two occasions, and was told by [the Director of Student Services] that my daughter has no right to a hearing. The noncompliance by the District needs to be addressed because my disabled child is not receiving an education because of it. I am again requesting a 504 due process hearing on behalf of [the Student], in hopes that you will comply with the statutes that have been set in place."

- On April X, 2014, the District's legal counsel, sent a letter to the Complainant stating in part:

I understand that your daughter [the Student] is a qualified individual under Section 504. You stated that you had requested a hearing on two previous occasions. You alleged your daughter is not receiving an education because of the District's noncompliance. You stated that you were requesting a hearing in hopes that the District will comply with statutes that have been set in place. I have enclosed a copy of the District's Section 504 Procedures and Procedural Safeguards. Pages 4-6 of that document outline the District Section 504 grievance procedures. Paragraphs 1-3 on page 5 identify steps to resolving disputes over the identification, evaluation, or accommodation of a qualified individual. Paragraph 3 states that if disagreement continues, a parent may request a hearing, in writing, to the Director of Student Services. It states that the request must include (a) the name of the student; (b) the specific decision or actions with which the parent disagrees; (c) the specific relief the parents seek; and (d) any other information the parent police is pertinent. Your correspondence does not include items (b)-(d). Consequently, it is unclear whether you have engaged in the procedures outlined in paragraphs 1 and 2, reference above. I would appreciate it if you would provide information to my attention.

- On April XX, 2014, an Administrative Hearing Panel met and conducted the Student's expulsion hearing. Both the Complainant and the Student attended the hearing. The recommendation made by the panel was to expel the Student for one year.
- On April XX, 2014, the Board of Education adopted the recommendations submitted by the administrative panel and the Student was expelled from April XX, 2014 through April XX, 2015. The Board also ordered the following rehabilitation plan: 1) pupil shall complete an anger management program; 2) pupil shall complete a decision-making program; 3) pupil shall participate in individual counseling program; 4) pupil shall complete 20 hours of community service; and 5) pupil shall demonstrate academic achievement and satisfactory attendance in an alternative educational placement. The notice of action from the Board of Education also informed the Complainant that she should contact the administrative assistant in student services to obtain a referral form for enrolling the Student into the Juvenile Court and Community School (JCCS), which is a County program.
- The Complainant did not enroll the Student in the County program. The Complainant told OCR that she felt that the JCCS was an inappropriate placement for the Student. The Student was not in an educational program for the remainder of the school year.

2014-2015 School year (7th grade)

- On August XX, 2014, the Complainant e-mailed the Associate Superintendent of Educational Services and stated in part:

Per our conversation today I would like to meet with you to set up behavior plan in place for [the Student], and I would like for the District to give me written assurance that my child will be safe at the school that you are offering. I would like to get all this set in place so that she can start school by Monday. This is definitely not the school of choice and I would like to have for my daughter but under limited choices it will have to do. I value education an[d] I do not want her to miss any more days because of legal matters pertaining to her due process been denied. Let me know if we can get her start on Monday. I will provide you with what I feel may be helpful to accommodate her under her 504. In the meantime we can start the process of her special education evaluation to see if she needs a higher level of care due to the knife incident. I am not a doctor of psychology so I did not know why she behaved the way she did nor do I tolerate it. But what I do know is that when the kids started with the bullying at [the middle school] there needed to be in intervention in which those who were in charge at that time failed to do....

- The Associate Superintendent of Educational Services sent the following response to the Complainant on the same day:

I will certainly get the ball moving. I am including my Director of Student Services... She will contact you to let you know the steps to get [the Student] into [JCCS], immediately. I am also including my Director of Special Education and she will touch bases with you to arrange a meeting to discuss your request of a behavior plan for [the Student]. If you like me present at that meeting, I can do so. Thank you

- On August XX, 2014, the Director of Special Education sent the following e-mail to the Complainant:

I have read your request below for an evaluation and behavior intervention plan for [the Student]. The team at [the JCCS] will be responsible for conducting those assessments in developing plans for [the Student]. I have discussed this case with our team here in Oceanside and we will help to ensure that your requests are communicated to [the JCCS] team during the enrollment process as well as collaborate with him during the assessment process.

- On September X, 2014, the Complainant sent an e-mail to the Director of Special Education stating:

I would like to request a 504 due process hearing regarding placement and accommodations for [the Student]. In the meantime, I would like some type of education set in place. I would like a special education evaluation performed. It has already been determined that [the Student] has ADHD, but I want her ADHD to be under IDEA as well as 504. [The Associate Superintendent of Educational Services] and [the Director of Student Services] were supposed to be going through the previous

evaluations interpreting the results but I have not received that part of the investigation yet.

- The Director of Special Education responded to the Complainant by e-mail on the same day stating:

I have forwarded a request to ..., who will ensure that the [JCCS] school team receives them. [The Student] has been expelled from the Oceanside School District, so we will not be the team who provide these things to you. However [the Student] and yourself are both members of our Oceanside family and we will support you in insuring that your requests are addressed.

- The Complainant sent the Director of Special Education another e-mail stating:

Thanks for the prompt response. [The Student] was refused a hearing regarding her expulsion as to whether her behavior was a manifestation of her behavior, or if the district was at fault, but I guess it will all be addressed at this hearing. Please let me know as soon as you hear something and if need be you can give [the JCCS] my e-mail as a point of contact.

- The Complainant told OCR that the hearings she requested in her e-mails were to contest the manifestation determination. The Complainant alleged to OCR that the District denied the Student an impartial Section 504 hearing to contest the findings made at the manifestation determination, which ultimately led to her expulsion. The District told OCR that the Complainant never requested a hearing to contest the findings made at the manifestation determination.
- On February XX, 2015, the District sent the Complainant an assessment plan. The Complainant signed the assessment plan on March XX, 2015. The District assessed the Student for Other Health Impaired, Emotional Disturbance, and Specific Learning Disability.
- On April XX, 2015, the School Board re-admitted the Student after completing her one year expulsion. The Student resumed attending the middle school on April XX, 2015. The Student never attended the JCCS during the 2014-15 school year, and no other placement was offered to the Student prior to this decision by the School Board.
- On May X, 2015, an initial IEP meeting was held for the Student. The IEP meeting was continued to May XX, 2015 to give the School Psychologist an opportunity to conduct further observations of the Student. Based on the Student's psychoeducational report, the Student qualified for special education under Emotional Disturbance. The Complainant has not yet consented to the IEP.

Conclusion for allegation 1: Whether the District failed to provide the Student with a FAPE by failing to provide the Complainant with procedural safeguards when it denied the Complainant's request for an evaluation for special education services and when it did not give her an opportunity for an impartial hearing under Section 504 after the Complainant contested the outcome of the Student's manifestation determination.

The Complainant requested an evaluation of the Student for special education services in December of 2013. On December XX, 2013, the District e-mailed the Complainant and informed her that the Student did not need to be evaluated based on her academic performance. On January XX, 2014, an SST meeting for the Student was held, where it was again determined that the Student did not need to be evaluated for special education services. After each of these decisions was made, the District did not provide the Complainant with information on how she could contest the District's decision through a due process hearing. Thus, OCR determined that the District failed to provide the Complainant with her procedural safeguards as required by 34 CFR §104.36.

On January XX, 2014, the District initiated a request that the Student receive services from a children's psychiatric office through the parent's Medi-Cal, even though it had just denied the parent's request for further evaluation of the student for additional or more severe disabilities. After the District decided not to evaluate the Student, the Student was suspended and recommended for expulsion for brandishing a knife at another student at school on January XX, 2014. On January XX, 2014, a manifestation determination meeting was held for the Student. During that meeting, the Complainant and District agreed that the Student would be evaluated for special education services. After the meeting, the District provided the Complainant with a packet of information that included the assessment plan and a copy of the procedural safeguards under IDEA and Section 504. The District also suspended the discipline process until the assessment was completed and informed the Complainant that if the Student was found to be eligible for special education services, the IEP team would conduct another manifestation determination to determine if the Student's misconduct was a result of the identified disability.

The Complainant, however, did not sign the assessment plan because she believed that the Student already qualified under the IDEA. The Complainant incorrectly believed that because she requested the special education evaluation for the Student prior to the misconduct, the Student automatically qualified for special education services and should be treated as a Student with an IEP during the manifestation determination meeting. The Complainant was incorrect in her understanding of the law and refused to sign the assessment plan.

In February of 2014, the Complainant began sending a number e-mails to District staff members requesting a due process hearing. Although the Complainant did not clearly state what kind of hearing she was requesting, the Complainant's e-mails indicate that she wanted some kind of hearing so that the Student could receive educational services. Since these e-mails were sent soon after the Section 504 manifestation determination, where the team determined that the Student's misconduct was not a manifestation of her ADHD, the only way the Complainant could get the Student back in school would be by contesting the manifestation determination.

Since the Section 504 Procedures that were provided to the Complainant did not explain how a parent could do this, it would make sense that the Complainant was unable to specifically ask for this type of hearing. The District, however, did not inform the Complainant that she could contest the manifestation determination, but instead told her that the only hearing that pertained to her situation was the expulsion hearing. This was not correct since the Complainant had the option of filing for an impartial hearing under Section 504 to contest the outcome of the Student's manifestation determination, and the Complainant was denied her opportunity to contest the decision of the 504 team. Thus, OCR determined that the District also failed at this point in time to provide the Complainant with her procedural safeguards as required by 34 CFR §104.36.

In order to address this noncompliance, the District agreed as part of the Resolution Agreement to revise its Section 504 Procedure so that it clearly states how a parent can appeal a manifestation determination. This will address the systemic noncompliance issue. In order to address the noncompliance with respect to the individual student, the District also agreed to remove the expulsion from the Student's records.

Conclusion for allegation 2: Whether the District denied the Student a FAPE by failing to evaluate her in all areas of suspected disability.

The Complainant made numerous requests for a special education evaluation in the first semester of the 2013-14 school year. At the beginning of the 2014-15 school year, the Complainant made another request for a special education evaluation of the Student. The District, however, believed that the County was responsible for the evaluation because the Student was expelled from the District program, and declined the request. Since the Complainant did not enroll the Student in a County program, OCR determined that under Section 504, the District continued to be responsible for the Student's evaluation as the district of residence. The regulation at 34 CFR § 104.33 states that a school district is responsible for providing students in their jurisdiction with a FAPE. The Student continued to reside within the District and because she never enrolled in the County school, the District remains responsible for her evaluation. The Student was out of school from January XX, 2014 to April XX, 2015 and did not receive any educational services during that time. Thus, OCR determined that the District was not in compliance with Section 504 regulations at 34 C.F.R. § 104.33 and 104.35.

To address the District's failure to evaluate the Student and provide the Complainant with her procedural due process protections in order to obtain an education for the Student, the Resolution Agreement states that the District will complete a psychoeducational evaluation of the Student and convene an IEP meeting. If the Student is eligible for services under IDEA, then the team will determine what services she needs. If the Student does not qualify for services under IDEA, then the District will hold a Section 504 meeting to determine what services the Student currently needs. The District also agreed to provide the Student with compensatory educational services to make up for the time she has been out of school, as well as her placement.

At this time, the District has implemented parts of the Resolution Agreement by completing the psychoeducational evaluation for the Student and by holding IEP meetings for the Student on May X and XX, 2015. The Student was found eligible for special education services under Emotional Disturbance. During this summer, the District also agreed to provide the Student with 98 hours of individualized instruction from July 1 -28, 2015 at North County Academy and 30 hours of individualized instruction by a District credentialed teacher at a time and location arranged by the parent and teacher between July 1, 2015 and August 7, 2015. Once the Student completes the individualized instruction during the summer, the District will conduct an academic assessment of the Student to determine if she has atypical academic deficits for a student entering the eighth grade. The District also agreed to convene an IEP meeting by September 14, 2015 to review the assessment and to determine if the Student needs additional compensatory serviced during the 2015-16 school year.

OCR also understands that the Complainant has not yet signed the Student's IEP May XX, 2015 IEP consenting to the provisions included in the document. Since OCR does not generally make determinations regarding the identification and evaluation of students with disabilities, or make determinations regarding the appropriateness of educational placement and/or services, any disagreements between the parties regarding these matter will need to be addressed through a due process hearing with the Office of Administrative Hearing.⁴

OCR is closing the investigative phase of this complaint as of the date of this letter. OCR will continue to monitor the implementation of the Resolution Agreement. Once the District fully implements the Resolution Agreement, the District will be in compliance with Section 504 and Title II with respect to the issues investigated in this case.

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. The Complainant will be notified about OCR's findings in a concurrent letter.

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 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 Complainant may file another complaint alleging such treatment.

⁴The website for the Office of Administrative Hearing is <http://www.dgs.ca.gov/oah/SpecialEducation/Resources.aspx>

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, we will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR thanks you for your assistance in resolving this case. If you have any questions about this letter, please contact Minako Sakurai at (415) 486-5552 or me at (415) 486-5566.

Sincerely,

/s/

James M. Wood
Team Leader

cc: Fagen Friedman and Fulfrost LLP