



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

June 29, 2015

Deanna Downs  
Principal  
Valley Oaks Charter School  
20705 South Street  
Tehachapi, California 93561

(In reply, please refer to case no. 09-14-1466.)

Dear Principal Downs:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Valley Oaks Charter School (Recipient). The Complainant alleged that the Recipient discriminated against the Student<sup>1</sup> on the basis of disability when it failed to provide her with a free appropriate public education (FAPE) by:

- 1) Failing to consider whether the Student was disabled and in need of related aids and services when it informed the Complainant that the Student was ineligible to re-enroll in its program for the 2014-15 school year because of academic ineligibility.
- 2) OCR added, *sua sponte*, an allegation that the Recipient discriminated by failing to implement the Student's behavior support plan as part of her Individualized Education Program (IEP) that was established after she re-enrolled in the School for the 2014-15 school year.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction 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 Recipient receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504 and Title II.

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<sup>1</sup> OCR notified the Recipient of the identities of the Complainant and the Student when the investigation began. We are withholding their names from this letter to protect their privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR gathered evidence through interviews with the Complainant and Recipient personnel, and by reviewing documents and records submitted by the Recipient and the Complainant.

Based upon the evidence, with respect to the first allegation, OCR concluded that there is sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II as alleged. The applicable legal standard, the facts gathered, and the basis for OCR's determination is 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 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.

Recipient background:

The Recipient is a dependent charter school, a member of the Special Education Local Plan Agency (SELPA) operated by the Kern County Superintendent of Schools Office. The Recipient has schools in six locations in California. Each Recipient school has a unique focus. The Tehachapi location (School), where the Student is enrolled, provides a non-traditional approach to educating students in a home school environment using an independent study format. Teachers, parents and students work as partners using a team approach to meet the individual needs, learning styles and interests of each student. The parents' role is that of the primary teacher to instruct the student. Parents are provided one-to-one instruction in general education by the School's certificated staff using accredited, curriculum-monitored instruction. The parents are responsible for implementing these strategies at home with the students. The Recipient reported that many students come into the Recipient schools from a homeschooling background.

OCR found the following:

- On August XX, 2013, the Student enrolled in the XXXXXXXX grade at the School. At the time of her enrollment in the School, she had not been identified as a student with a disability. The Student failed four classes her first year at the School. She

previously attended school in the Tehachapi Unified School District where she failed six classes in the XXXXX grade.

- Because the School is a homeschool-based program, students are not required to be present on campus every day. They are offered the option of taking voluntary, weekly enrichment classes on campus in each subject in which they are enrolled. The Student has been enrolled in the enrichment classes since she entered the School. Students' attendance is tracked, not by their physical attendance in enrichment classes, but by work samples they submit. They are graded on assignments and tests.
- The Complainant reported to OCR that the Student received straight A's and honors prior to high school. In 2012 the Student was diagnosed with depression, IBS and h-pylori after the death of significant individuals in her life, which began impacting her academic progress. In December 2013, the Complainant reported to the principal and one of her teachers that the Student was having emotional difficulties. The Student's teachers offered extra time and tutoring to work with the Student but she did not utilize it.
- On March XX, 2014, the School and all of the Student's teachers received an email from the Complainant, stating that the Student had been out of school for a couple of weeks with serious medical problems, that she was ill and had difficulty continuing in school, that these conditions had been ongoing for the past three years, and that he offered to provide her medical records. The Complainant also stated that the Student was going to return to School and requested an extension on her work deadline. On March XX, 2014, one of the Student's teachers forwarded the email to the principal.
- The Student's teachers told OCR that all students have flexibility on the timing of the completion of their work within a semester as long as they come in to do their assessments for the class. A teacher reported that she took the Complainant's request for extra time to fall under the School's common practice for flexibility and therefore did not notify the Complainant of a special extension on the work.
- On April X, 2014, the special education director received from the Complainant a written request for a Section 504 meeting and the Student's medical history impacting her academic performance. The special education director informed the Complainant that the principal was responsible for handling Section 504 requests and the special education director only handled IEP special education assessments. That same day, the principal informed the Complainant that the School was in the process of working on his Section 504 request; she was awaiting receipt of the Student's medical documentation from him; and she scheduled a 504 meeting on April XX.

- On April XX, 2014, the Complainant made a written request to the School for a special education assessment. On May XX, 2014, the Special Education Director received the Complainant's signed special education assessment plan. The Recipient scheduled the IEP meeting for September XX, 2014. The spring semester ended on May XX, and the fall semester began on August XX.
- School personnel reported to OCR that, prior to the Complainant's April XX, 2014 written request for an assessment, they did not have any conversations with the Complainant regarding the Student's academic challenges and did not consider that the Student might have a disability. School personnel did report, however, that, beginning in the spring 2014 semester, the Student was missing significantly more enrichment classes, not submitting her work or completing her assessments, and falling further behind, which accelerated by March 2014 through the end of the school year. Her teachers reported that these were the reasons for the Student's failure of three of her six spring 2014 core classes.
- The Student's teachers reported that they did not recall anything significant about the Student's behavior or emotional state that might have impacted her academic performance. The Student's on-campus attendance was not consistent, but when she did attend, they observed that she followed their directions when in class, and did average to above average work when she did complete it. Her teachers did not consider or discuss amongst themselves or with the Complainant that the Student may have a disability.
- During the 2013-14 school year, School personnel routinely discussed students who were struggling academically at weekly faculty meetings. During these meetings, the teachers discussed the Student's grades and ways they could help her progress. The Student's teachers reviewed an academic plan with the Student in March 2014, created to help her catch up for each class. The Student's teachers also reported that subsequently, the Student's on-campus participation and completion of academic work declined significantly. One teacher recalled regularly sending the Student's grade reports to the Complainant. On April X, 2014, the Science teacher sent the Complainant an email with the Student's academic plan agreement to help her catch up in that class but she did not hear back from the Complainant.
- The Recipient's Academic Probation Policy states that students are placed on probation for a minimum of four school weeks if they fail to meet scheduled appointments with the resource teacher; fail to turn in satisfactory graded completed work; fail to show academic progress during an assignment period of four school weeks; and fail to meet the terms of their Master Agreement.

- The Student's Master Agreement, signed by the Complainant on December XX, 2013, indicated that the Student would meet with the teacher; submit student work; complete assignments; and record time, day and frequency of submitting student work on each assignment record form. Among a list of terms to which the Complainant agreed, it stated that parents and student were responsible for keeping all appointments with the resource teachers and submitting timely completed, reviewed and corrected original work; the maximum assignment period is four weeks during which parents and the student must meet with a resource teacher a minimum of at least one time and may be granted an extended period up to one semester; students who fail to satisfactorily complete a four-week assignment and/or meet with a resource teacher a minimum of at least one time within a report period will be placed on probation for one report period; and students who fail to meet the terms of probation will be dropped from the School and the district/school of residence will be notified.
- On April XX, 2014, in a letter to the Complainant from the Student's resource teacher, she stated that the Student had not met the terms of the Master Agreement and the School placed her on academic probation for four weeks. The reasons stated for the probation were that the Student failed to report to the scheduled meetings, turn in assigned work, and make progress in accordance with the Agreement. The letter further stated that at the end of the four weeks, an evaluation would be made to determine the probation status, and that if the Student continued not to follow the agreed terms of the Agreement, the School would drop her from the program and refer her to another education program better suited to her needs.
- Also on April XX, the School convened an academic probation meeting for the Student to discuss the terms of her probation. As noted above, the Complainant made a request on that day for the Student to be assessed for special education services. The School reported that the academic probation was to provide extra support to make sure the Student succeeded in the program; and that at the April XX meeting, it set up and reviewed the terms of the Student's probation and discussed possible alternative placement options for the Student. The Student's probation period ended on May XX, 2014.
- On June XX, 2014, the School sent a letter to the Complainant, stating that the Student had not met the requirements of her academic probation and therefore was ineligible to re-enroll in the School for the 2014-15 school year. The letter outlined the probation requirements that the Student and her parents had not met:
  - Failure to complete assignments;
  - Failure to schedule and keep appointments with the resource/subject teachers;
  - Lack of adequate implementation and supervision of the homeschool program.

- On August XX, 2014, after school had already started for a week, the Complainant appealed the School's decision and requested that the School re-enroll the Student. On September X, the School reversed its decision. The Student missed the first eleven days of school.
- From September X-X, 2014, the School conducted the Student's special education assessments. The initial IEP meeting took place on September XX. The School determined that the Student qualified for special education services.
- The Complainant alleged that the School promised that it would add a behavior support plan to the Student's IEP, but that did not happen initially. Additional mental health assessments were completed by the School based on a September XX referral/consent by the Complainant. On November XX, 2014, the School added additional social emotional support services to the Student's IEP as recommended by the mental health assessment report.
- In the spring 2015 semester, the School reports that the Student's completion of class assessments began significantly declining again, that she retained poor grades and that the Complainant was blocking the Student's required IEP social-emotional support services. The Complainant notified the School in February that the Student was falling behind due to changes to her medications.

In the context of providing a FAPE under Section 504, the regulations, at 34 C.F.R. §104.3(j), define an individual with a disability as any person who has a physical or mental impairment which substantially limits a major life activity. The definition of disability under the Title II regulations, at 28 C.F.R §35.104, is substantially the same.

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. A school may become aware of the need for an evaluation through a request from a parent or through its own observations indicating that a student has an impairment that limits a major life activity and that he or she may need special education or related services. Notice that a student has a medical condition does not, by itself, trigger an obligation to conduct an evaluation. However, if such a condition appears to have an impact on academic or behavioral problems that limit the student's academic performance, an evaluation may be required.

Based on the evidence gathered during the investigation, OCR concluded that the School denied the Student a FAPE because it failed to assess her and develop and implement an appropriate Section 504 Plan to address her disability during the 2013-14 school year. The School received written notice from the Complainant on March XX, 2014 that the

Student had a medical condition and that he was concerned that it was negatively affecting her attendance and academic performance. The School also was aware of the Complainant's request for a Section 504 meeting on April X, as well as his April XX request for a special education services assessment. On June XX, 2014 the School informed the Complainant that the Student would not be eligible to enroll in the fall based on her failure to meet academic probation requirements, without consideration of the Complainant's notice and requests for a 504 evaluation and later, an IEP assessment.

As a result, the Student began School 11 days late into the 2014-15 school year. The Student's late re-enrollment further delayed assessing her for special education and related services until September X and completion in November, 2014. For the reasons outlined above, OCR determined that during the 2013-14 school year the School had reason to believe that the Student was disabled and in need of regular or special education and related aids and services under Section 504, but failed to assess her and develop an appropriate Section 504 Plan until after the Student already missed 11 days of the 2014-15 school year. Accordingly, OCR concluded that the School did not meet Section 504 and Title II requirements with respect to this allegation, and finds sufficient evidence of noncompliance.

As concerns the Complainant's second allegation, OCR found that the Student's IEP did not include a behavior support plan. Based upon the assessments conducted in September 2014, the District made a referral on September XX, 2014, for mental health assessments to determine whether the Student was eligible to receive related services. The November XX, 2014 mental health assessment report included specific required and recommended social-emotional services for the Student. The School added to the Student's November XX IEP all of the required and recommended social-emotional services outlined in the assessment report. Therefore, OCR determined that there is no evidence to show that the School failed to implement a behavior support plan and finds insufficient evidence of noncompliance as to this allegation.

To address compliance with respect to allegation one, the School has agreed to implement an Agreement whereby it will convene an IEP meeting to consider whether the Student needs compensatory education due to the delay in assessment; and provide training to the School staff on Section 504 requirements regarding identification and evaluation of students with disabilities.

This concludes OCR's investigation of the complaint. OCR will monitor the School's implementation of the Agreement and is informing the Complainant of these findings by concurrent letter. Resolution of this complaint 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.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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

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

OCR wishes to thank the Recipient and legal counsel, Stacy Inman, for the cooperation extended to OCR during the resolution process. If you have any questions about this letter, you may contact Rosalie Gendimenico at 415-486-5517 or [rosalie.gendimenico@ed.gov](mailto:rosalie.gendimenico@ed.gov) or Gemini McCasland at 415-486-5536 or [gemini.mccasland@ed.gov](mailto:gemini.mccasland@ed.gov).

Sincerely,

/s/

James Wood  
Team Leader

Enclosure

Cc: Stacy Inman  
Assistant General Counsel  
Schools Legal Service