



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION IX  
CALIFORNIA

October 28, 2016

Mr. Timothy Vanoli  
Superintendent  
Salinas Union High School District  
431 West Alisal Street  
Salinas, California 93901

(In reply, please refer to case no. 09-16-1021.)

Dear Superintendent Vanoli:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Salinas Union High School District (District). The complainant alleged that the District discriminated against her on the basis of disability.<sup>1</sup> OCR investigated whether the District failed to respond promptly and equitably to a complaint made in April 2015, alleging the complainant was: a) subjected to disability harassment by two District employees; and b) was not provided with an approved testing accommodation (extra time) on April XX, 2015.

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 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, as amended (Title II), 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, Title II, and the regulations.

To investigate this complaint, OCR interviewed the complainant and a District administrator, and reviewed documents and other information provided by the complainant and the District. The District, without admitting to any violation of federal or state law and regulations and without making any admission of noncompliance, entered into the enclosed Resolution Agreement (Agreement) that, when fully implemented, is intended to address all of OCR's noncompliance findings and compliance concerns.

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<sup>1</sup> OCR notified the District of the complainant's identity at the start of the investigation. We are withholding the complainant's name from this letter in order to protect her privacy.

The legal standards, findings of fact, and the reasons for our determinations are summarized below.

**Allegation: Whether the District failed to respond promptly and equitably to a complaint made in April 2015, alleging the complainant was: 1) subjected to disability harassment by two District employees; and 2) was not provided with an approved testing accommodation (extra time) on April XX, 2015.**

### Legal Standards

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities.

#### *Academic Aids, Benefits, and Services*

Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iii), school districts, in providing any aid, benefit or service, may not deny a qualified person with a disability an opportunity to participate, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others, or provide a qualified person with a disability with an aid, benefit or service that is not as effective as that provided to others. Under 34 C.F.R. §104.38, a recipient that provides adult education may not exclude individuals on the basis of disability and must take into account the needs of disabled persons in determining the aid, benefits or services to be provided.

In addition, the Title II regulations, at 28 C.F.R. §35.130(b)(7), require public entities to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Whether or not a particular modification or service would fundamentally alter the program is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to a disabled individual would result in additional cost does not of itself constitute an undue burden on the program.

#### *Notice of Nondiscrimination and Section 504/Title II Coordinator*

The Section 504 regulations, at 34 C.F.R. §104.8(a) and (b), require a recipient employing 15 or more persons to take appropriate and continuing steps to notify program participants, beneficiaries, applicants, employees, and unions or professional organizations that it does not discriminate on the basis of disability. The notification

must also identify the responsible employee designated under 34 C.F.R. §104.7(a) to coordinate its efforts to comply with the regulations. The Title II regulations, at 28 C.F.R. §35.106, similarly require a public entity to inform applicants, participants, beneficiaries, and other interested persons about the protections against disability discrimination assured by Title II and the regulations. Under 28 C.F.R. §35.107(a), public entities employing 50 or more persons must also notify all interested individuals of the name, address, and telephone number of the designated Title II compliance coordinator.

#### *Grievance Procedures*

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging harassment by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

#### *Hostile Environment*

School districts are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee, the district is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a

reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

#### Findings of Fact

- The Regional Occupational Centers and Programs (ROP) were designed to provide high school and adult students with career and technical education through regional programs or centers.
- The District is a member of the Mission Trails ROP under a Joint Powers Agreement with seven school districts in Monterey County. The District operates the Mission Trails ROP program/center in Salinas, California (District ROP).<sup>2</sup>
- The complainant registered for the District ROP as an adult student in August 2014. She completed a two-page registration form, which asked, "Are you Disabled (Handicapped)?" The complainant did not circle either "Yes" or "No." Another part of the registration form asked, "Have you ever participated in special education while in school?" The complainant circled "No." Prior to enrolling in the District ROP, the complainant was not a student in the District, and therefore, the District had no prior knowledge that she had a disability at the time of her District ROP registration. The complainant did not provide the District ROP with any documentation of her disability.
- The complainant described her disability to OCR as arthritis and an essential tremor, which made her a slow writer.
- In Spring 2015, the complainant was enrolled in the District ROP's physical therapy aide certificate program. The complainant alleged to OCR that she was

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<sup>2</sup> As used herein, the District ROP refers to the ROP program or center in Salinas, California, and not to other Mission Trails ROP sites that are operated by other school districts.

discriminated against on the basis of disability in the following two ways by two District ROP employees--the course instructor (Teacher) and a vocational evaluator (Evaluator)<sup>3</sup>:

- First, the complainant alleged that the two employees routinely made disparaging remarks about her disability and whether she could succeed in the classroom or in a work setting because of her disability. The complainant told OCR that the Teacher refused to give her a letter of recommendation for a physical therapy internship that she had found, citing her disability as the reason. In addition to remarks about her disability, they made other derogatory remarks that were personal in nature that were upsetting and humiliating to the complainant.
- Second, she alleged that the Teacher failed to provide an approved testing accommodation (extended time) for an exam on April XX, 2015. The complainant also told OCR that her requests for other accommodations were denied by the Teacher, as follows:
  - The complainant's request to take a "verbal" test on April XX, 2015, was denied.
  - The complainant's attempt to record the class on March XX, 2015 was stopped by the Teacher. The complainant wanted to record the class due to her disability, but the Teacher told her that it was illegal to record without her consent and made her erase the recording. In the District's written response to OCR, the District stated that State law and District Board policy prohibit students from using a recorder in class without the teacher's permission, and that complainant had made an unauthorized use of her cell phone recorder during a class session.
  - On March XX, 2015, the complainant did not want to participate in a class exercise due to her disability, but the Teacher responded that she was using her disability as an excuse and that she would not receive any credit if she did not participate in the exercise. The complainant participated in the exercise despite experiencing pain from arthritis.
- According to the complainant, she spoke to the Director of the District ROP (Director) on April XX, 2015, and complained about her treatment by the Teacher and the Evaluator. The complainant told OCR that on the following day, the Director responded that the Teacher and the Evaluator had failed to follow proper protocol, that all teachers will be receiving training in working with students with disabilities, and that the Teacher and the Evaluator will no longer be allowed to be together in the complainant's classroom or near the complainant.

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<sup>3</sup> Vocational evaluators work with adult ROP students to administer career assessments and support them in preparation for the workplace.

- On the same day that the Director responded to her, the complainant filed a uniform complaint (UCP) with the District, alleging disability harassment by the two District ROP employees. The complainant's UCP was assigned to the District's Assistant Superintendent of Human Resources (AS-HR) for investigation.
- According to the District, once it learned of the complaint, it took prompt action to investigate it, which included separate interviews of the complainant, the Teacher, and the Evaluator, as well as a review of student records. The District told OCR that in interviews with the Teacher and Evaluator, the District was able to verify some of the employee actions described in the complaint, which the District determined were inappropriate.
- The District told OCR that the Director took the following actions: She (1) informed the two employees that their interactions with the complainant were inappropriate; (2) directed the Evaluator to cease her interaction with the complainant; (3) directed the Teacher to contact administration when any subsequent issues arise involving the complainant; and (4) directed the Teacher to accommodate the complainant's disability by providing her with more time to complete work, to accommodate the complainant's range of motion in physical class activities, and to allow the use of a recorder with permission in class. In addition, the Director (5) visited the complainant's class regularly to monitor the Teacher; and (6) offered to meet with the complainant, but she declined. The District told OCR that the complainant did not report any subsequent incidents of harassment by the Teacher or the Evaluator. The District told OCR that the Teacher and the Evaluator are no longer employees of the District.
- Subsequent to filing the UCP complaint, the complainant emailed the AS-HR on April XX, 2015 about a test she took on April XXXX, stating that while she was given more time to complete the test, she could not understand the instructions or the format of the test. She stated that she requested to take a "verbal test," but was told by the Teacher that she would not receive any credit for it, so she chose to continue with the written test. She wrote that going forward, she should have the option of taking a written or verbal test. The AS-HR forwarded the email to the Director, who replied on the same day that she met with the Teacher, who stated that the complainant was provided with an additional 45 minutes to complete the test and that the Teacher provided assistance "the entire time" by sitting next to her and using her hands as well as verbal instruction to explain each area on the test. The Director also responded that she was trying to contact the complainant to set up a meeting to discuss her concern, but was having trouble reaching her. According to the District, the complainant received a score of 85% (170 out of 200 points) on the test.
- The District did not issue a final written decision to the complainant in response to her UCP. On October XX, 2015, the complainant emailed the AS-HR, requesting a letter of resolution be mailed to her. The AS-HR responded that the

District had investigated the matter and wanted to meet with her to discuss what had happened. The complainant reiterated that she wanted the results of the investigation in writing. The AS-HR forwarded the complainant's email to his assistant, asking her to schedule a meeting with the complainant. His assistant informed the AS-HR that she had spoken with the complainant, who was not available to attend a meeting and wanted "everything" mailed to her. No letter of resolution was issued to the complainant, which the District acknowledged to OCR was "atypical."

- The District stated that it provided training to its District ROP teaching staff on the civil rights of students on August XX, 2015. A review of the agenda shows that only five minutes was scheduled for this topic, as part of a one-hour in-service training for District ROP instructors. The attendance sheet shows that the Teacher was present, but the Evaluator was not. The District told OCR that the Evaluator may not have been employed by the District when the training was provided.
- OCR asked the District for policies and procedures for providing aids, benefits, and services (collectively, "accommodations") to adult ROP students, but no relevant documents were provided. The District did not provide any policies or procedures on how adult ROP students with disabilities can request accommodations, what documentation needs to be submitted, who will consider the student's request and decide which accommodations are approved, how the approved accommodations will be implemented, and how students may file a grievance regarding their accommodations.
- The District's nondiscrimination/harassment policy is found at BP/AR 5145.3 (adopted August 27, 2015), which prohibits discrimination, harassment, and retaliation of any student based on a number of protected characteristics, including disability, at any District school or activity.
- The District uses its UCP procedure as its Section 504/Title II grievance procedure. OCR reviewed the District's UCP procedure found at BP/AR 1312.3 (issued February 23, 2016):
  - The procedure requires the superintendent (or designee) to provide an annual written notification of the UCP procedure to students, employees, and parents/guardians.
  - The procedure contains a clear statement that the District will use the procedure to resolve any complaint alleging unlawful discrimination, harassment, intimidation, or bullying in District programs and activities.
  - There is no explicit statement that the procedure applies to complaints filed by third parties and to off campus conduct that has an impact on campus.
  - The procedure requires complaints to be filed within six months from the date of the alleged discrimination or the date on which the complainant

- obtained knowledge of the facts of the alleged discrimination. An extension of 90 days is available upon written request by the complainant.
- The procedure requires all parties involved in the allegations to be notified when a complaint is filed and when a decision or ruling is made. The procedure requires the District to issue a final written decision (defined in the procedure to include a findings of fact, conclusions of law, rationale for the District's conclusion, and corrective actions including individual remedies provided to complainants and systemic remedies taken to eliminate a hostile environment and prevent its recurrence) to complainants only.
  - The procedure states that within 10 days of receiving the complaint, the compliance officer will begin an investigation that includes providing the complainant with an opportunity to present information/evidence and interviewing relevant witnesses and reviewing all available records related to the complaint. The compliance officer will determine whether interim measures are necessary pending the results of an investigation.
  - The procedure requires the compliance officer to use the "preponderance of the evidence" standard in making a determination, and upon concluding the investigation, to either (1) issue a final written decision to the complainant within 60 days (unless extended by written agreement with the complainant) or (2) issue a final written decision to the complainant within 30 days, who then has five days to file a complaint in writing to the school Board if he/she is dissatisfied with the compliance officer's decision. The Board may consider the matter at a board meeting in order to meet the 60-day time limit; if the Board decides not to hear the complaint, the compliance officer's decision is final.
  - A complainant who is dissatisfied with the District's final written decision may appeal to the California Department of Education (CDE) within 15 days of receiving the District's decision; no timeline is specified for the completion of the appeal by CDE.
- With respect to the lack of clear application to third parties and off campus conduct, the District's attorney told OCR that the UCP would apply to these types of complaints as long as the District could establish a "connection" needed to exercise jurisdiction over the third party or the off campus conduct. With respect to the issuance of a final written decision to complainants only, the District's attorney pointed out to OCR that the UCP does require both parties to be notified when a decision or ruling is made and that the District typically issues something in writing to respondents at the conclusion of the investigation.
  - OCR reviewed the District ROP website and documents to see if they provide the required Section 504/Title II notices to students and employees:
    - OCR reviewed the District ROP registration form completed by the complainant and the course description and outline for the physical therapy course in which the complainant was enrolled in Spring 2015.



The registration form contained a nondiscrimination statement on the basis of disability, but none of the documents provided notice of the District's Section 504/Title II grievance procedure (the UCP) or identified the AS-HR as the UCP compliance officer. They also did not inform students that the District provides accommodations to adult students with disabilities to ensure an equal opportunity to participate in the District ROP program.

- OCR reviewed the websites relevant to the District ROP program.
  - i. OCR reviewed the website for the Mission Trails ROP, to which the District ROP belongs. The Mission Trails ROP website contains information relevant to all ROP programs operated by the seven school districts (including the District). The homepage of the Mission Trails ROP website contains a nondiscrimination statement on the basis of disability and a link to the District's annual notification of the UCP, which provides information about the District's UCP procedure and identifies the AS-HR as the UCP compliance officer; the homepage also contains a link to an online UCP complaint form. The Mission Trails ROP website does not discuss the availability of accommodations to adult students with disabilities.
  - ii. In addition to the Mission Trails ROP website, each school district within the Mission Trails ROP maintains a separate website for its individual ROP program. OCR reviewed the website for the District ROP program and found that it contains a nondiscrimination statement on the basis of disability, but does not contain information or a link to the District's UCP or provide the name and contact information of the UCP compliance officer. The website does not inform students that accommodations will be provided to adult students with disabilities or provide any information on how to request and obtain accommodations.

#### Analysis & Conclusions of Law

Where the allegations filed with OCR have been investigated through a recipient's internal grievance procedures, OCR reviews all documentation of the recipient's investigation and resolution of the complaint to determine whether the recipient provided a resolution and remedy using legal standards and a process that meet the regulations enforced by OCR. If OCR finds that the recipient has met these requirements, OCR generally will not conduct its own independent investigation. If OCR finds that the recipient has not met these requirements, OCR will either conduct its own independent investigation or develop a remedy appropriate to address the issue of noncompliance.

To investigate whether the District failed to provide a prompt and equitable response to the complaint of discrimination and harassment made by the complainant, OCR reviewed District policies and documents relevant to Section 504 and Title II, specifically, the District's grievance procedure applicable to complaints of disability discrimination, the District's procedures for the provision of accommodations to adult ROP students with disabilities, and the District's provision of notices required by Section 504 and Title II.

Regarding the District's grievance procedure, OCR reviewed the District's current UCP, issued on February 23, 2016.<sup>4</sup> The UCP lacks an explicit statement that it applies to complaints filed by third parties and to complaints regarding off campus conduct that have an impact on campus. Also, while it requires all parties involved in the allegation to be notified when a decision or ruling is made, it requires the issuance of a final written decision to complainants only. The District's attorney told OCR that, in practice, the UCP can apply to third party complaints and to complaints regarding off campus conduct that has an impact on campus if the District can establish a connection needed to exercise jurisdiction over the complaint, and that the District notifies recipients in writing at the conclusion of the investigation. To ensure that District ROP employees are aware of these District practices, the District will specifically address these topics in trainings provided to all District ROP staff and to individuals with responsibility for implementing the UCP, as specified in the enclosed Agreement.

In all other respects, OCR found that the UCP is in compliance with Section 504 and Title II and their implementing regulation. In this regard, the UCP provides notice of the procedures, including an annual written notification of the UCP to students, employees, and parents/guardians; requires the District to conduct an adequate, reliable and impartial investigation, including interviews with the complainant and relevant witnesses and reviewing all documents related to the complaint; provides timeframes for completing the investigation and for filing an appeal; requires notice to the parties when a complaint is filed and a decision is made; and requires the District to take reasonable steps to prevent the recurrence of any discrimination found to have occurred and appropriate remedial steps.

In reviewing other relevant Section 504/Title II policies, OCR found an area of noncompliance with respect to the District's process for providing accommodations to adult ROP students with disabilities. In the case at hand, because the complainant was an adult high school graduate, the District was not required to provide the complainant with a free appropriate public education. However, the District was required to provide the complainant with accommodations necessary to provide her with an equal opportunity to participate in the District ROP. None of the District ROP documentation that OCR reviewed, including the Mission Trails ROP website, the District ROP website, and the complainant's registration form and course description/outline for the physical therapy aide course, informed students that accommodations were available to adult

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<sup>4</sup> OCR reviewed the District's UCP for compliance only with Section 504 and Title II and their implementing regulations, which were at issue in this case. OCR did not review the District's UCP for compliance with any other statutes or regulations enforced by OCR.

students with disabilities. The District failed to provide OCR with any policies or procedures for how adult students can request accommodations, what documentation needs to be provided, who will consider the student's request and decide which accommodations are approved, and how the approved accommodations will be implemented.

OCR also identified an area of concern with the District's notice to applicants, students and employees about its Title II/Section 504 grievance procedure (the UCP) and compliance officer. While the registration form and the Mission Trails and District ROP websites contain a nondiscrimination statement on the basis of disability, only the website for the Mission Trails ROP contains information about the District's UCP and compliance officer. Neither the registration form nor the District ROP website contains this information.

The District, without admitting to any violation of federal or state law and regulations and without making any admission of noncompliance, has entered into the enclosed Agreement that, when fully implemented, is intended to address the areas of noncompliance and concern discussed above. Pursuant to the Agreement, the District will: (1) develop a written process for requesting, determining, and implementing approved accommodations for adult ROP students with disabilities and provide notice to District ROP adult students of the written process, including the name/title and contact information of the employee(s) to whom requests for accommodations should be made; and (2) provide District ROP employees and students with notice of nondiscrimination on the basis of disability and notice of the District's UCP and compliance officer.

- a. Whether the complainant was subjected to disability harassment by two District employees, and the District failed to respond promptly and equitably to her complaint made on approximately April XX, 2015.*

In April 2015, the complainant reported to the Director that she was being harassed and discriminated against by the Teacher and the Evaluator and submitted a written UCP to the District. Upon receiving notice, the District acted promptly in initiating an investigation by conducting separate interviews with the Teacher, the Evaluator, and the complainant. After determining that some of the alleged comments had been made and determined to be inappropriate, the Director issued several directives to the Teacher, including requiring her to contact an administrator if any issues arise involving the complainant and to accommodate the complainant's disability. She also directed the Evaluator to cease future interactions with the complainant.

While the District took several actions in response to the complainant's complaint, the District's response did not ultimately meet the requirements of Section 504 and Title II for the following two reasons. First, while the District initiated its investigation promptly and conducted an impartial investigation, the investigation was not completed in a prompt manner because the District never informed the complainant of the resolution of her complaint or issued a final written decision to the complainant. The District's UCP requires the issuance of a final written decision to complainants, which did not happen

in this case. The AS-HR made several attempts to schedule a meeting with the complainant to discuss the outcome of the District's investigation, even though the complainant made it clear that she wanted the District's findings in writing. The District did not issue a written decision to the complainant, and was not successful in meeting with the complainant to review the outcome of the investigation.

Second, even though the Teacher and the Evaluator are no longer employees of the District, the evidence is lacking that the District took action to remedy the effects of the alleged harassment on the complainant and to repair the educational environment. No individual remedy was provided to the complainant, and the District's training on the civil rights of students provided to the District ROP teaching staff in August 2015 was minimal, lasting five minutes according to the meeting agenda. For these reasons, the District failed to provide a prompt and equitable resolution to her complaint of harassment on the basis of disability.

With respect to whether the complainant had been harassed by the two District employees and subjected to a hostile environment on the basis of disability, the District identified in its investigation that former staff may have behaved inappropriately in their interactions with the complainant. In order to complete its investigation, OCR would have needed to interview the former staff alleged to have engaged in the behavior and conduct further interviews and review of documents to determine whether the alleged harassment occurred, whether it was on the basis of disability, and whether it was severe, persistent or pervasive. However, prior to completing the investigation, the District expressed an interest in voluntarily resolving the issue and OCR agreed that such resolution would be appropriate.

The District, without admitting to any violation of federal or state law and regulations and without making any admission of noncompliance, has entered into the enclosed Agreement that, when fully implemented, is intended to address the issues of noncompliance with respect to the District's response and the allegation of harassment on the basis of disability. Pursuant to the Agreement, the District will: (1) issue a letter of findings to the complainant that addresses whether disability discrimination or harassment occurred, the actions the District took in response to her internal complaint, and the actions the District will take pursuant to the Agreement; (2) conduct mandatory training for individuals with responsibility for implementing the UCP procedure for the District ROP, including training on the District's UCP procedure; (3) provide mandatory training to all District ROP staff on disability discrimination and harassment; (4) offer individual counseling by a District-employed licensed counselor at no cost to the complainant to be completed within six months from the date of the District's letter; and (4) issue a letter of recommendation to the complainant relevant to her successful completion of the physical therapy aide certificate program.

- b. Whether the complainant was provided with an approved testing accommodation (extra time) on April XX, 2015, and the District failed to respond promptly and equitably to her complaint about this issue, which was reported on April XX, 2015.*

A couple of weeks after filing her UCP complaint, the complainant emailed the AS-HR, on April XX, 2015, to report a complaint about a test she took on April XXXX. She stated in her email that while she was given more time to complete the test, she did not understand the test instructions or format, that her request to take a “verbal test” was denied by the Teacher, and that going forward, she wanted the option to take a written or verbal test. The complainant did not state whether, by emailing the AS-HR who is the UCP compliance officer, she was intending to expand her UCP complaint to include this issue regarding testing accommodations.

The AS-HR forwarded the email to the Director, who replied on the same day that she met with the Teacher, who stated that the complainant was provided with an additional 45 minutes to complete the test and that the Teacher provided assistance “the entire time” by sitting next to her and using her hands as well as verbal instruction to explain each area on the test. The Director stated that she tried reaching the complainant to set up a meeting to discuss her concerns, but could not reach her. According to the District, the complainant received a score of 85% (170 out of 200 points) on the test.

While the complainant's email to the AS-HR undermines her allegation to OCR that she was not given extra time to complete a test on April XX, 2015, the District's response raises a couple of compliance concerns for OCR. First, while the AS-HR took prompt action in forwarding the complainant's email to the Director for investigation, and while the Director in turn took prompt action in meeting with the Teacher and replying to the AS-HR, the documentation is lacking that the District provided a response to the complainant regarding the concerns she raised in her email. While documentation shows that the Director tried to set up a meeting with the complainant to discuss her concerns, there is no documentation that the Director was successful in meeting with her or that a written reply (such as an email) was provided to the complainant to address her concerns. For example, there is no documentation that the District provided an answer to her request to have the option to take either a verbal or written test as an accommodation going forward. Second, without any written documentation of the complainant's approved accommodations, OCR could not determine how or whether the District determined that the additional 45 minutes that the Teacher said was provided to the complainant was consistent with her approved accommodation.

As noted above, the District lacks a process for determining and providing accommodations to adult ROP students with disabilities. In the complainant's case, OCR notes that the District's lack of process created several challenges for her. For example, without a clear, centralized process for requesting and approving accommodations, the complainant was put in an unenviable position of having to request accommodations directly from the Teacher, whom she believed was hostile to her. And the Teacher, a person with no obvious expertise in disability law or experience in determining appropriate accommodations, appears to have had discretion to approve or deny a request for accommodation. Moreover, because the complainant's accommodations were not written down, OCR could not determine without further investigation which accommodations had been agreed to.

Prior to completing the investigation of whether the complainant was provided with extra time on a test on April XXXX, which would have required interviews with District employees to try to determine her approved accommodations, including how much extra time the complainant was approved to receive, the District, without admitting to any violation of law, expressed an interest in voluntarily resolving the issue and OCR agreed that such resolution would be appropriate. OCR has determined that the Agreement provision discussed above, whereby the District has agreed to develop a written process for requesting, determining, and implementing approved accommodations for adult ROP students with disabilities and to provide notice to District ROP adult students of the written process, when fully implemented, will address the compliance concerns noted above.

OCR offers the following technical assistance to the District regarding a student's ability to record a class as a reasonable accommodation for a disability. The District told OCR that California Education Code §51512 and District Board policy 5131.8 prohibit students from using a recorder in class without the instructor's consent. OCR notes that neither State law nor District policy should be interpreted or applied to preclude the rights of individuals with disabilities to a reasonable accommodation. A review of the cited State law and Board policy shows that they are not inconsistent with the requirements of Section 504 and Title II. California Education Code §51512 expressly states that it should not be construed as affecting the rights provided by any other provision of law. And BP/AR 5131.8, which regulates a student's use of electronic devices to prevent cheating, a disruption of instructional activities, and an invasion of privacy, expressly provides exceptions to the policy allowing students to use electronic media for health reasons and other "justifiable" reasons. OCR notes that a justifiable reason should include granting accommodations for a disability. As stated previously, under Section 504 and Title II, school districts must make reasonable modifications to their policies for students with disabilities in order to provide them with an equal opportunity to participate in a district program or activity; in some circumstances, a reasonable modification could include allowing a student with a disability to use a recorder in class as an approved accommodation, without needing the consent of the instructor.

### Conclusion

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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

When fully implemented, the enclosed Agreement is intended to address the violations and compliance concerns identified in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with Section 504, Title II, and the implementing regulations at issue in this case.

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, threaten 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact Jenny Moon, civil rights attorney, at 415-486-5538 or [jenny.moon@ed.gov](mailto:jenny.moon@ed.gov).

Sincerely,

/s/

Mary Beth McLeod  
Team Leader

Attachment: Resolution Agreement

Cc: XXXX XXXX, attorney, Lozano Smith