



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

June 6, 2017

Dr. David J. Vierra  
Superintendent  
Antelope Valley Union High School District  
44811 North Sierra Highway  
Lancaster, California 93534

(In reply, please refer to OCR Case Number 09-16-1496.)

Dear Superintendent Vierra:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its resolution of the above-referenced complaint against the Antelope Valley Union High School District (District). The Complainant alleged that the District discriminated against her son (Student) on the basis of disability.<sup>1</sup> Specifically, OCR investigated the following issues:

1. Whether the District's Academies of Antelope Valley program (AAV Schools) denied the Student admission because he has a disability.
2. Whether the District's AAV Schools failed to evaluate the Student prior to making a significant change in his educational placement at his August X, 2016 Individualized Education Program (IEP) meeting and whether the resulting placement determination was based on the Student's individual educational needs.

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 (ADA), as amended, and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District, including its AAV Schools program, 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 conducted interviews and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered, OCR concluded that the District violated Section 504 and Title II with regard to the Issue 1 but

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant and the Student. We are withholding their names from this letter to protect their privacy.

found the District in compliance as to Issue 2. OCR notes that the District took action during the course of the investigation to partially resolve the violation. In addition, the District agreed to fully resolve the violation by entering into the attached Resolution Agreement. The facts gathered by OCR, the applicable legal standards, and the reasons for OCR's conclusions are summarized below.

### **Factual Findings**

AAV Schools is a dependent charter school system established by the District and designed to offer students alternative educational settings focusing on Science, Technology, Engineering, and Math (S.T.E.M.) and virtual learning. At the time at issue, AAV Schools consisted of three distinct academies: Students on Academic Rise (SOAR) Preparatory Academy (grades 7 and 8) (SOAR Prep), Knight Preparatory Academy (grades 7 and 8) (Knight Prep), and the Virtual Academy (grades 7-12). All of the Academies operated in District facilities, were located near District high schools, and were staffed by District employees.

The AAV Schools Charter specifically provides that it will not discriminate against any student on the basis of disability and will admit all pupils who wish to attend, up to capacity, provided that the parent/guardian completes all enrollment documents within established deadlines. The Charter states that AAV Schools will function as a public school of the District for the purposes of state and federal laws governing special education and notes that the District will determine how special education and related services are to be provided. The Charter also provides that AAV Schools will comply with all applicable state and federal laws in serving students with disabilities, including Section 504, the ADA, and the Individuals with Disabilities Education Act (IDEA), and states that the District is responsible for ensuring such compliance.

The 2016-17 Application for Admission forms for all three academies required an applicant with an IEP to provide a copy. The forms for SOAR and Knight Prep also required copies of Section 504 Plans and psychologist reports, if applicable, and stated that failure to disclose these documents was grounds for dismissal from enrollment. The forms for all three academies also stated that, in terms of special education services, the academies offered resource specialist program (RSP) watch and consult services and designated instruction services (DIS). The Virtual Academy form stated that if a student had an IEP, his/her instructional setting must be identified as RSP watch and consult. The forms did not include a nondiscrimination on the basis of disability notice.

AAV Schools had brochures describing the programs at SOAR and Knight Prep during the 2016-17 school year. The SOAR Prep brochure stated that appropriate accommodations for students with special needs were provided in accordance with their IEPs. The Knight Prep brochure contained no such statement. Both brochures included a nondiscrimination on the basis of disability notice. The Virtual Academy had no similar brochure during the time at issue. At the time the OCR complaint was filed, online information for all three academies advised potential applicants that a completed application must contain a copy of a current IEP, 504 Plan, or student study team (SST) documentation, if applicable. Online information for the Virtual Academy repeated the requirement that if an applicant student had an IEP, his/her instructional setting must be identified as RSP watch and consult.

The AAV Principal and Special Education Teacher on Special Assignment (SE/TSA), as well as the District Program Specialist assigned to AAV Schools at the time, reported to OCR that the full range of special education and related aids and services available in the District are also available at AAV Schools.

During the 2015-16 school year, the Student was enrolled as a XXXXX grader in the Eastside Union School District (EUSD). According to an IEP dated October XX, 2015, the Student's primary disability is autism and his secondary disability is a speech or language impairment. He was placed in a general education program with RSP monitoring and collaboration, and was assigned: 20 minutes a week of specialized academic instruction (SAI) in the general education setting; a one-on-one aide for behavior support; group speech and language support; and adaptive physical education (APE). He also had a behavior intervention plan (BIP). The IEP listed 14 different accommodations/modifications that the Student needed and stated that staff who serve him receive training on teaching students on the autism spectrum.

After attending a parent information night for AAV Schools on February X, 2016, the Complainant called AAV Schools to inquire about enrolling the Student. An office clerk informed her that the Student would not be registered for the program until his IEP was submitted and reviewed by the SE/TSA. The Complainant submitted an enrollment application to SOAR Prep on February XX, 2016, attaching a copy of the Student's October XX, 2015, IEP and a letter of recommendation from the EUSD Superintendent. She was again told by office staff that the application would be accepted only if the IEP was attached.

On February XX, 2016, the SE/TSA called the Complainant to discuss the application. The Complainant and the SE/TSA had different recollections of that conversation. The Complainant told OCR that the SE/TSA said that the Student could not be admitted to either SOAR or Knight Prep because the only service available was a watch and consult program where a case manager would periodically monitor the Student's grades and general performance. The SE/TSA told OCR that she attempted to describe the program to the Complainant and they discussed the Student's IEP. She denied telling the Complainant that the Student could not be admitted because the only services they offered was watch and consult. Both agreed that the SE/TSA ended the call by referring the Complainant to the District Program Specialist (Program Specialist) for further discussion.

The Complainant and the Program Specialist spoke by telephone on or around February XX, 2016. Again, both remembered the conversation differently. The Complainant reported to OCR that the Program Specialist stated that she would not sign off on the Student's enrollment because he was not a "good fit" for the AAV Schools program. The Complainant told OCR that the Program Specialist said that the District had more established special education programs and resources at the high school level AAV Schools program that were not available at the middle school level. The Complainant also stated that the Program Specialist told her that the District could not provide the Student with APE, speech services, or a one-on-one aide if he enrolled in the middle school program. The Complainant said that she challenged this decision and ultimately convinced the Program Specialist to reconsider it, but only if the Complainant provided her a copy of additional documentation such as the Student's evaluation, his BIP, and his functional behavior analysis.

The Program Specialist reported to OCR that during this telephone conversation she and the Complainant went through the October 30, 2015, IEP in detail, and she noted that the IEP referred to documents that she did not have, such as a BIP, a triennial IEP, and a psychological evaluation. She also stated that the Complainant told her that the Student no longer needed certain supports and services reflected in the submitted IEP. For these reasons, she said that she requested additional documentation from the Complainant so that she would be able to develop a program for the Student. The Program Specialist denied telling the Complainant that the Student was not a good fit for the program, or saying that AAV Schools was unable to provide certain special education or related aids and services at the

middle school level. She did recall talking to the Complainant about what the then-current AAV Schools middle school program and high school program looked like.

The Complainant provided the Program Specialist the following information on February XX, 2016: another copy of the October XX, 2015 IEP; a functional behavior analysis dated October X, 2014; a BIP dated June X, 2015; and an IEP amendment dated October X, 2014. The Program Specialist reviewed these documents and highlighted certain information concerning the Student's functional limitations and the level and range of necessary services.

The District reported that the Program Specialist and the Complainant spoke again by telephone on March X, 2016. The Program Specialist stated that she explained the AAV Schools program, went over all the services the student needed, and ultimately recommended that the Complainant get an updated IEP from EUSD that better reflected his then-current needs. She told OCR that it was her understanding, based on statements made by the Complainant, that the October XX, 2015, IEP was no longer an accurate reflection of the Student's needs and she wanted to have current information to develop a placement for him. The Complainant did not recall this conversation and stated that the Program Specialist's request for an updated IEP from EUSD was made during the initial telephone call in late February 2016, referenced above.

On March XX, 2016, the Complainant submitted another enrollment application to Knight Prep, attaching the October XX, 2015, IEP and the EUSD Superintendent's letter of recommendation. She told OCR that she was again informed by office staff that the application would not be accepted without the IEP attached and that an enrollment decision would not be made until the IEP had been reviewed.

On March XX, 2016, the Complainant sent an email to the Program Specialist, informing her that EUSD would be hosting an IEP meeting to update the Student's IEP. She asked if the Program Specialist would like to attend and requested dates that worked for her. The Program Specialist did not respond to this email. The Complainant told OCR that she then left several voicemail messages for the Program Specialist as a follow-up but did not receive any response. The Program Specialist denied not responding to voicemails from the Complainant.

The EUSD IEP meeting was ultimately scheduled for April XX, 2016. EUSD sent an IEP invitation to the Program Specialist, the SE/TSA, and the District Director of Special Education. The Complainant also sent an email on April X inviting them. The Program Specialist sent an email reply to the Complainant the same day declining the IEP meeting because Special Education staff had a conflict.

On April XX, 2016, the Program Specialist sent an email to the Complainant. The email states that the AAV Schools administrative team knew that, based on the IEP that was provided to Knight Prep and SOAR Prep, their program does not meet the instructional needs for the Student. It notes that the supports that the Student needs to be successful include an RSP program with supplemental services, DIS services, and multiple accommodations and/or modifications. The email states that this level of support is typically provided through special education programs on the District's comprehensive campuses due to the level of support required to fully implement the services. It continues that in order to be eligible for either school the Student needed to be able to demonstrate the ability to work independently 99% of the school day. The email says that documentation of this ability could be verified through a current IEP document provided to AAV Schools. The Program Specialist ends by recommending that the Student attend his school of residence where all of his educational needs could be met and his current IEP implemented.

The Program Specialist told OCR that she made this recommendation based on the information that she had, which did not include an updated IEP. She stated that she was giving the Complainant information on what AAV schools typically does and what they typically have in place. The Program Specialist said that the statement about working 99% independently was in reference to how other students were currently functioning in the program. She confirmed that she recommended that the Student remain in EUSD but said that she did so because she felt that AAV Schools did not have accurate information about his needs and, because of that, would not be able to craft a program to meet those needs.

The Complainant replied to April XX, 2016, email on the same day, stating that SOAR Prep was a public charter school and that the eligibility requirement the Program Specialist was imposing was unlawful. She stated that SOAR Prep could meet the Student's educational needs, that she intended to move forward with his enrollment, that she had the EUSD IEP meeting on April XX, and that she would provide a copy of the updated IEP.

The April XX, 2016, EUSD IEP placed the Student in a general education setting with a one-on-one aide for behavior support, and assigned him APE services, a BIP, and RSP consult services. The IEP discontinued direct speech services but provided for a speech therapist consult. The IEP continued to require that staff working with the Student receive training on teaching students on the autism spectrum, and his numerous accommodations and modifications from the October XX, 2015, IEP remained in place.

The Complainant told OCR that she sent a copy of the April XX, 2016, IEP to the Program Specialist, but received no response. The Program Specialist stated that she never received a copy of this IEP from the Complainant. The Complainant provided no documentation to OCR showing that she sent the IEP.

On or around May X, 2016, the Complainant contacted SOAR Prep and Knight Prep office staff and was told that other students who had applied and had been accepted had already attended their registration appointments and completed their math assessments. The Program Specialist sent an email to the Principal, the SE/TSA, and the District Coordinator of Psychological Services on May X, 2016, stating that she was told that the Complainant had contacted AAV Schools regarding the Student's enrollment status. She noted that the Complainant had an IEP in April and that the District had not received the updated IEP. The Program Specialist said that the SE/TSA would contact the Complainant to review the new IEP, if provided, but that at this time the Student required several supports that could be provided at his current school of residence. She stated that it sounded like the Complainant did not realize that the Program Specialist had not approved her application.

On May XX, 2016, the EUSD IEP team developed an IEP amendment for the Student to consider whether he needed increased or decreased support in his middle school placement. The team determined that general education classes with one-on-one aide support would be the least restrictive environment for the Student. Another IEP meeting was held by EUSD on May XX. The Student's placement continued to be general education classes with full time one-on-one aide support; RSP consult 20 minutes per week and as needed; and APE for 1200 minutes per year. His accommodations and modifications were also continued, including his BIP and service providers being trained to teach autistic students. The team agreed that regular speech and language consult services would cease, but determined that the speech therapist would consult with the one-on-one aide and general education teacher on an as-needed basis. The team also found the Student eligible for extended school year (ESY) services.

The Complainant told OCR that she also sent the May XX, 2016, EUSD IEP to the Program Specialist. Again, she stated that she received no response. The Program Specialist told OCR that she did not receive a copy of this IEP from the Complainant. The Complainant provided no documentation to OCR showing that she sent the IEP.

In July 2016 the Complainant submitted an application on behalf of the Student to the Virtual Academy. In response to the application question asking whether the Student had an IEP, the Complainant indicated that he did not.

By letter dated July 18, 2016, OCR notified the District that this complaint had been filed. On August X, 2016, OCR learned that AAV Schools had decided to offer the Student enrollment into the program of the Complainant's choice. On August X, 2016, the Principal informed the Complainant that the Student would be allowed to enroll. The Complainant selected the Virtual Academy.

The Principal, the SE/TSA, and the Program Specialist told OCR that once a student with an IEP is enrolled in one of the AAV Schools they generally hold a transition IEP meeting and implement the IEP the student comes in with for 30 days. After 30 days they hold a full IEP meeting to determine whether the IEP needs to be changed. These witnesses stated that students' IEPs are not typically changed upon enrollment.

On August X, 2016, AAV Schools held a transition IEP meeting for the Student. The District reported to OCR that it was at this meeting that the Complainant first provided a copy of the May XX EUSD IEP. The form used to document the meeting states that the form should be attached to a current IEP and the box indicating whether an IEP was attached was checked yes. However, the form provided to OCR by the District was not attached to any other IEP document. Participants included the Principal, the Vice Principal, the Complainant, the new Special Education TSA, the new Program Specialist,<sup>2</sup> and the Student's previous one-on-one aide.

The August X, 2016, IEP (August X IEP) provides that the Student would receive: 80 minutes of SAI monthly through RSP watch and consult and 120 minutes of APE per month. The IEP states that with respect to other special education and related services more data was needed and that the IEP team would discuss this at the 30 day meeting. Under a section entitled additional information, the IEP states that the last annual was held on May XX, the next evaluation was due December XX, and the Student had a behavior support plan (BSP). The narrative notes state that the Complainant told the team that the Student needed the accommodations in his entering IEP and that he no longer required speech services.

The August X IEP form states that the receiving school is to do the following if the student is within the Antelope Valley Special Education Local Plan Area (SELPA) (which the Student was): immediately implement the IEP as written; conduct a 30 day assessment only if circumstances warrant it; and hold a meeting within 30 days, if needed, to amend goals, objectives, and services. The Complainant signed the IEP, acknowledging that AAV Schools could implement the Student's entering IEP as written.

When comparing the supports and services listed on the August X IEP to those listed on the May XX EUSD IEP, OCR noted that the August X IEP, as written: does not provide that the Student will receive RSP consult as needed in addition to his regular RSP consult services; increased the Student's APE

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<sup>2</sup> The previous SE/TSA became a Program Specialist and another individual took over her position as SE/TSA.

services from 1200 minutes per year to 1440 minutes per year; does not require a one-on-one aide; does not require that staff working with the Student need to be trained in serving autistic students; does not require a speech therapist consult, as needed; does not list the numerous accommodations and modifications which were required by the May XX IEP; does not provide for ESY; and has no goals. AAV Schools staff confirmed that the District did not conduct an evaluation of the Student prior to the transition IEP meeting.

OCR interviewed the Principal and the new Program Specialist about their recollections of the August X, 2016 IEP meeting. OCR was unable to interview the Complainant about the transition IEP meeting because she did not respond to OCR's requests. The Principal did not specifically recall information discussed that was not documented on the IEP. The new Program Specialist recalled that they set up a plan based on the May XX EUSD IEP referenced in the August X IEP document. She also told OCR that certain services and accommodations were provided to the Student but were not specifically listed on the transition IEP. For example, the new Program Specialist said that they did not repeat the list of accommodations from the IEP into the transition IEP, but they did give that list to the general education teacher. She also stated that they put the then-current SE/TSA in charge of serving as the Student's one-on-one aide until they had his 30 day IEP meeting, even though that was not specifically reflected in the transition IEP. The new Program Specialist noted that the then-current SE/TSA was trained in dealing with autistic students and was with the Student whenever he came to school. The new Program Specialist told OCR that the May XX IEP was implemented while the Student was at the Virtual Academy, including his speech consult services and BSP.

The Student started attending the Virtual Academy on August X, 2016, which was the first day of school for all enrolled students. The Academy's electronic data system noted that the Student did not consistently attend activities or complete assignments and was earning failing grades in all of his classes. At one point he did not attend for three weeks in a row. Ultimately, the Complainant withdrew the Student from the Academy and his records were sent to a middle school in EUSD on September XX, 2016. Again, OCR was unable to interview the Complainant concerning the circumstances surrounding the Student's withdrawal and the nature of his placement while he was enrolled at the Academy because she did not respond to OCR's requests.

OCR requested and the District provided a listing of all students who applied to either SOAR Prep or Knight Prep to enter the XXXXXX grade in fall of 2016. Of those who were approved, 8 were students with disabilities, including students with speech and language impairments, specific learning disabilities, ADHD, and autism. The new Program Specialist told OCR that they did not hold transition IEP meetings for these other students but just implemented their entering IEPs. Two disabled students withdrew their application. The Student was the only one whose applications were denied or placed in no action status. For the Student, the reason provided for denying one application was "Group S & L N/A; Parent: Svcs. PLOP<sup>3</sup> not current on IEP;" for the other application the reason given was no action/pending because "Current IEP Psych report Not Provided; Group speech N/A on campus."

During the course of the OCR investigation, AAV Schools revised its Enrollment Packet and now uses the same forms for all three schools. The 2017-18 Enrollment Packet no longer refers to watch and consult and DIS services. However, the Packet continues to request information about whether the student has a current IEP, SST Plan, 504 Plan, or psychological report. The Packet has a document checklist and

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<sup>3</sup> Present levels of performance.

states that all items listed must be provided before an Enrollment Packet will be reviewed. The required list includes a copy of a current IEP/504 Plan/SST report/psychological report, if applicable.

### **Determination**

**Issue 1: Whether the District’s AAV Schools denied the Student admission because he has a disability.**

#### **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. Under 34 C.F.R. §104.4(b)(1)(i) and 28 C.F.R. §35.130(b)(1)(i) a recipient public school system may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR first examines whether there is direct evidence of discriminatory treatment on the basis of disability. Absent that, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school system provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school system’s actions were based on the individual’s disability.

#### **Analysis**

The preponderance of the evidence gathered during the investigation supports a conclusion that the District denied the Student enrollment in its AAV Schools program based upon his disability-related needs, in violation of Section 504 and Title II.

OCR found direct evidence that the decision to deny enrollment was based the nature and extent of special education and related aids and services required by the Student’s entering IEP. AAV Schools enrollment practices, reflected in the 2016-17 Application for Admission forms and online admission information, conditioned even enrollment consideration on the Complainant’s provision of extensive disability-related documentation for the Student. In addition, verbal information provided to the Complainant by AAV Schools staff conditioned an enrollment determination on review of this information by the Special Education TSA and later by the Program Specialist. Further, the 2016-17 application forms and online information stated that only one special education placement was available at AAV Schools, RSP watch and consult services and DIS, whereas the Student needed a number of additional services and supports. AAV Schools reported to OCR in writing that the Student’s applications were denied or placed in no action status in part because group speech and language services were not available at AAV Schools, even though the physical locations of the schools are near District high school campuses and AAV Schools is operated by the District.

Finally, while there was a conflict in the witness testimony regarding verbal exchanges between the Complainant and AAV Schools and District personnel during the application process, the written enrollment determination shows that the required disability-related documentation was in fact used as the basis for denying the Student access to the AAV Schools program. Specifically, the April XX, 2016, email to the Complainant stated that the AAV Schools program did not meet the Student's instructional needs based on the IEP provided, that the level of support he needed was typically provided in special education programs on the District's comprehensive campuses, and that in order to be eligible the Student needed to demonstrate the ability to work independently 99% of the school day. In effect, this reasoning conditioned the Student's admission to AAV Schools on his waiving his right to a FAPE and held him to an admission standard not in place for any other student, both of which are prohibited by Section 504 and Title II.

OCR further found, however, that during the course of the investigation, the District took action to partially resolve this area of violation. Specifically, it directed AAV Schools to offer the Student enrollment in an AAV School program of the Complainant's choice, which was an appropriate individual remedy for the Student. The Student enrolled into the Virtual Academy and began on the same day as other students. In addition, the District worked with AAV Schools to revise its 2017-18 Enrollment Packet to delete language stating that the only special education program offered was watch and consult services and DIS, and that failing to disclose certain special education documentation was grounds for dismissal from enrollment. However, the revised Enrollment Packet still requires current special education documentation before AAV Schools will even review the Packet, thereby continuing to condition enrollment on receipt and review of information related to a student's disability, an additional documentation and review process which is not required of students without disabilities.

**Issue 2: Whether the District's AAV Schools failed to evaluate the Student prior to making a significant change in his educational placement at his August X, 2016 IEP meeting and whether the resulting placement determination was based on the Student's individual educational needs.**

#### Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public school systems, including public charter schools, 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 public school systems to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the regulations also requires public school systems 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.

#### Analysis

The preponderance of the evidence outlined above is insufficient to conclude that the District's AAV Schools made a significant change in the Student's placement at the August X, 2016, IEP meeting. Therefore, it was not obligated under Section 504 and Title II to conduct an evaluation prior to the meeting. The evidence also showed that the August X placement determination was individualized, as required by Section 504 and Title II.

Documentation of the details of the placement determination in the August X IEP was not precise. However, the August X IEP document specifically referred to the May XX EUSD entering IEP and stated that the AAV Schools could implement that IEP, which the Complainant acknowledged in writing. OCR also considered information provided by AAV Schools and District witnesses about the established process for transition IEPs, which did not include routinely changing entering students' IEPs, and the Virtual Academy program, which allowed students to attend school in person and not just online. In addition, the new Program Specialist confirmed that the services and supports required by the May XX EUSD entering IEP were provided to the Student while he was enrolled at the Virtual Academy even though they were not actually listed in the August X IEP. Finally, OCR noted that the Complainant participated in the August X IEP meeting, signed in agreement, and did not raise with OCR that the Student's placement changed significantly or that the placement decision was not individualized. Taking all of this into account, OCR determined that AAV Schools agreed to implement the elements of the Student's May XX EUSD IEP during the August X IEP meeting and did not significantly change his placement upon enrollment. Accordingly, OCR did not find sufficient evidence that the District failed to comply with Section 504 and Title II requirements with respect to this issue. As a matter of technical assistance, OCR suggests that future AAV Schools transition IEP teams determining that an entering IEP will be implemented for the first 30 days of enrollment either fully document each element of the entering IEP in the transition IEP or incorporate the entering IEP by reference and attach it to the transition IEP.

**Conclusion:**

For the reasons outlined above, OCR found the District out of compliance with Section 504 and Title II requirements with respect to Issue 1 and in compliance as to Issue 2.

To address the identified area of noncompliance, the District entered into the attached Resolution Agreement which is aligned with the complaint issues, the findings made, and the information obtained by OCR during its investigation. The District agreed to modify AAV Schools' enrollment process and other materials to: specify that AAV Schools does not discriminate on the basis of disability; provide information about the District's Section 504 and Title II designated employee; remove any reference to a request for information about an applicant's disability prior to enrollment; clarify that AAV Schools offers a full range of special education and related aids and services based on the individual needs of an enrolled student with a disability; and specify that AAV Schools will inquire about a student's disability, if any, and related documentation only after the student has been accepted for enrollment and for the purpose of providing the student a FAPE and an equal opportunity to participate in AAV Schools services, programs, and activities. The District also agreed to distribute the modified materials to relevant AAV Schools staff and to conduct effective training to ensure consistent implementation.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Resolution Agreement until the District is in

compliance with the statute(s) and regulations at issue in the case with respect to the issues investigated.

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

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

Please be advised that the District may not harass, coerce, intimidate, retaliate, 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Julie Baenziger at (415) 486-5502, or me at (415) 486-5555.

Sincerely,

/s/

Brian Lambert  
Acting Team Leader

Attachment

Cc: Bridget Cook, Esq.