



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

June 5, 2017

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

(In reply, please refer to case no. 09-17-1249.)

Dear Superintendent Vierra:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against Antelope Valley Union High School District (the District). OCR began an investigation into the following issues:

1. Whether the District failed to follow adequate evaluation and placement procedures by removing provisions from the Student's¹ Section 504 plan outside of the Section 504 process; and
2. Whether the District failed to implement the Student's Section 504 plan as written.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds and is a public education entity and is therefore subject to the requirements of Section 504 and Title II and their implementing regulations.

OCR gathered evidence in this investigation by reviewing documents and correspondence provided by the Complainant and the District, and by interviewing the Complainant. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

¹ OCR previously provided the District with the identity of the Student. OCR is not including the Student's name in this letter to protect the Student's privacy.

Issue 1: Whether the District failed to follow adequate evaluation and placement procedures by removing provisions from the Student's Section 504 plan outside of the Section 504 process.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Findings of Fact and Analysis

The Student was a seventh grade student at a school in the District (the School) starting in the fall 2016. The Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). When the Student entered the School in the fall of 2016, the Student had an existing 504 plan from his prior elementary school.

The School held a Section 504 meeting for the Student on January XX, 2017, to review and revise the accommodations in the Student's Section 504 plan. In the written complaint to OCR, the Complainant alleged that the "counselor took out some accommodations at the 504 meeting stating the accommodations did not apply to the current school."

The Complainant subsequently provided more information to OCR about the process through which accommodations were discussed at the Student's Section 504 meeting. The Complainant told OCR that the Student's counselor managed the Section 504 process by reading the accommodations from the Student's previous Section 504 plan

and having the team discuss each accommodation and whether to keep it or replace it with something else. In particular, the Complainant was concerned that the School took out an accommodation in the Student's existing Section 504 plan regarding penmanship, because the Section 504 team said that teachers at the School did not penalize any students for bad penmanship, so the accommodation was not needed.

Based on this clarification of the description of the process and a review of the Section 504 plan and related documents, OCR determined that this process did not constitute a failure to follow the evaluation and placement procedures required under Section 504. OCR found that the decision to remove accommodations from the Student's previous plan was made by the Section 504 team during the Section 504 meeting, which the Complainant attended. The Section 504 meeting included a group of people knowledgeable about the Student, which was the appropriate group to determine what accommodations were needed (including the penmanship accommodation). OCR therefore concluded that there was insufficient evidence to find that the District violated Section 504 by failing to follow adequate evaluation and placement procedures.

Issue 2: Whether the District failed to implement the Student's Section 504 plan as written.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. §104.33(b)(2). 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.

Facts Gathered to Date

- The Complainant told OCR that the School did not implement the Student's Section 504 plan in the fall of 2016, in that she believed that the Student's teachers did not consistently implement the following accommodations listed in the Student's Section 504 plan:
 - Allow extra time on classwork and tests per teacher approval.
 - Redirect attention as needed.
 - Break down long term assignments/projects.

- During lengthy lessons (more than 30 minutes) provide stretch breaks and/or allow [the Student] to discuss with a partner.
 - Present instructions/directions one step at a time.
 - Parent/teacher communication planner to ensure homework is completed and turned in.
 - Teacher to provide copies of class notes.
- The Complainant told OCR that when she received the Student's first progress report for the 2016-17 school year, she was alarmed at his poor performance. OCR reviewed the Student's first progress report, which showed that at that time the Student was receiving two F grades, one D grade, and a C grade in another class where the teacher noted that he was "in danger of failing." At that time, the Complainant began contacting the Student's teachers regularly. The Complainant reported to OCR that she continued to have concerns throughout the first quarter that his Section 504 plan was not being implemented. OCR reviewed the student's report card for the full first quarter of the school year, which showed two D minus grades and one D grade.
 - The District provided copies to OCR of forms showing that the Student's Section 504 plan was distributed to the Student's teachers. The documents showed that none of the Student's teachers signed the forms stating that they received the Section 504 plan until September 9, 2016, and one teacher did not sign the form until September 26, 2016. The first day of school was August 8, 2016.
 - With respect to the provisions in the Section 504 plan for "teacher to provide copies of class notes" and "parent/teacher communication planner to ensure homework is completed and turned in," emails provided by the Complainant and the District revealed some initial confusion about how the Complainant would know what assignments the Student had, and how to access class notes from the teacher, as required by the Section 504 plan.
 - As noted above, in January 2017, the School convened the Student's Section 504 team and revised his Section 504 plan. For the third quarter of the school year (which covered the period after the Section 504 meeting), the Student was earning A's or B's in 5 of his 7 classes.
 - The Student voluntarily left the School and enrolled in a school outside the District in March 2017.

Analysis

Once a Section 504 plan is created, Section 504 requires that teachers implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

Based on the facts gathered to date, OCR had concerns about whether the Student's Section 504 plan was being fully implemented during the fall of 2016, particularly during the first month of school (before the first progress report) when the Student was most struggling. The Student came to the School with an existing Section 504 plan from his elementary school, though it was unclear whether the plan was distributed to the Student's teachers immediately. As noted above, OCR also reviewed evidence showing confusion on the part of the Complainant about how to access the Student's homework assignments and class notes as required by the Section 504 plan, but based on the investigation to date, OCR had not yet determined the exact cause of that confusion. Finally, OCR found evidence that the Student was struggling significantly during the initial period when the Complainant said that the Section 504 plan was being implemented, but OCR had not yet determined whether the struggles the Student was having were tied to failures to implement the Section 504 plan, or whether they were caused by other factors.

In order to complete the investigation and make a determination, OCR would have to interview the Student's teachers and other members of the Student's Section 504 team in order to make a determination about whether the Section 504 plan was being implemented appropriately, or whether the Student's struggles were instead caused by an initial failure to fully implement the plan. Prior to completing the investigation, however, the District notified OCR that it was interested in pursuing a voluntary resolution agreement under Section 302 of OCR's Case Processing Manual. Under the Resolution Agreement, the District is required to provide training to all School staff on their responsibilities under Section 504, with a focus on students that are transitioning into the school with an existing Section 504 plan.

Conclusion

Based on the commitments made in the enclosed resolution agreement as to Issue 2, 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 OCR's compliance concerns discussed above. OCR will monitor the implementation of agreement until the District is in compliance with the statutes and regulations that were at issue in the case.

OCR's determination in this matter 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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Blake Thompson, Civil Rights Attorney, at (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Encl: Resolution Agreement