



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

March 1, 2018

**SENT VIA ELECTRONIC MAIL**

Michael H. Lin, Ed.D.  
Superintendent  
Corona-Norco Unified School District  
2820 Clark Ave.  
Norco, California 92860

(In reply, please refer to case no. 09-18-1028.)

Dear Superintendent Lin:

The U.S. Department of Education, Office for Civil Rights (OCR), resolved the above-referenced complaint against Corona-Norco Unified School District (District). The Complainant alleged that the District denied the Student a free, appropriate public education (FAPE) by failing to implement provisions of her Section 504 Plan, and disciplining her for behaviors associated with her disability.<sup>1</sup>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as part of a public education system, the School is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents provided by the Complainant and the District. Prior to completing its investigation, the District voluntarily agreed to enter into a Resolution Agreement (Agreement) with OCR pursuant to Section 302 of OCR's Case Processing Manual. OCR determined that a Section 302 Agreement was appropriate in this case. When fully implemented, the Agreement is intended to resolve the concerns raised in this case. The information gathered by OCR to date, the applicable legal standard, and the resolution of the case are summarized below.

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

## Facts

The following information was relevant to OCR's analysis:

The Student was XXXXX years old and enrolled in XXXXX grade at a School in the District (School) during the 2017-2018 school year. The Student was diagnosed with Attention Deficient Disorder (ADHD), and was served with a Section 504 Plan, dated April 20, 2017. The Complainant stated to OCR that 24 of 53 provisions of the 504 Plan were not implemented during the 2017-2018 school year, including but not limited to the following provisions:

- Extra time in and out of the classroom for assignments.
  - The Complainant stated to OCR that in November, 2017 she received texts from the Student's Teacher stating that the Student's work was incomplete, without reference to providing extra time.
  - The District's December 8, 2017 written response to OCR stated that the Student's assignments were untimed and that the Student was not penalized for turning assignments in late.
- Use of a timer to report progress to the Teacher.
  - The Complainant stated to OCR that the Student did not have a timer.
  - The District's December 8, 2017 written response to OCR stated that the Teacher was initially concerned that the use of a timer would cause negative attention from peers, however, since October XX, 2017, a buzzer was placed on the Student's desk for her to use as needed.
- Focus on praise for work completed.
  - The Complainant stated to OCR that the Student has never reported to her that the Teacher praised her for her work.
  - The District's December 8, 2017 written response to OCR stated that the Teacher provided verbal praise, saying "good job," and "well done." The District's response stated that the Student participated in an ice-cream party for learning her 12s times tables. There was also a star system in the classroom. If the Student earned eight stars in a week, she could select an item from the treat basket, which she has done since the star system was implemented in early September 2017.
- Reduce re-writing of prompts when not necessary.
  - The Complainant stated to OCR that the Teacher continued to send re-writing sentence assignments home.
  - The District's December 8, 2017 written response to OCR stated that none of the XXXXX grade students re-write prompts as they are posted and visible in the classroom. The Student's spelling homework is typed for her.
- Provide positive incentives.
  - The Complainant stated to OCR that the Teacher offered the class an ice-cream party on November 8, 2017, but it did not happen. The Complainant also stated to OCR that the Student was prohibited from participating in Fun Fridays and missed recess.

- The District's December 8, 2017 written response to OCR stated that the Student participated in an ice cream party, and selected treats from the treat basket regularly. The Student missed "Fun Friday" once. The Teacher used a classroom currency, which the Student earned and exchanged from a homework pass.
- Ignore minor inappropriate behavior.
  - The Complainant stated to OCR that there was a popcorn incident during the Fall 2017 that should have been ignored, but was not, and a September XX, 2017 lunch pail incident that should have been ignored, but was not.
  - The District's December 8, 2017 written response to OCR stated that many of the Student's behaviors were ignored, unless they were not minor and disruptive, in which case, the Student received multiple warnings. According to the District, behaviors that were not ignored because they were not viewed as minor by the Teacher included throwing a water bottle and lunch pail from a second story balcony, and standing on a toilet throwing spit wads at the ceiling.
- Allow to doodle and fidget.
  - On August XX, 2017, the Complainant and Teacher had a meeting to discuss the Student's doodles on an exam.
  - The District's December 8, 2017 written response to OCR stated that the Student has multiple fidget manipulatives at her desk, such as doodlers, bracelets and chew necklaces and pencil toppers. The Student is permitted to fidget and doodle throughout the day.
- Designate Break Area.
  - The Complainant stated to OCR that there is no area in the classroom to stand or otherwise take a break. The Complainant stated to OCR that on September X, 2017, the Student told her she did not feel she was allowed to take breaks.
  - The District's written response to OCR stated that the Student had a designated break area called the nook.
- Assign tasks for increased responsibility.
  - The Complainant stated to OCR that no tasks, such as passing out papers, have been assigned to the Student.
  - The District's December 8, 2017 written response to OCR stated that the Student was given a variety of tasks for increased responsibility, including hanging art work, and rotating through class jobs, such as door monitor, greeter and paper distributor.
- Utilize organizational notebook.
  - The Complainant stated to OCR that she had a meeting with the Teacher on August XX, 2017 wherein the Teacher stated she would begin using a notebook to communicate with the Complainant. On September X, 2017 the notebook had not yet been used, despite a verbal reminder from the Complainant on September X, 2017.

- The District's December 8, 2017 written response to OCR stated that the notebook was in use for regular communication between the Teacher and Complainant.
- Make sure Student gets from the Teacher to the Parent when school ends.
  - The Complainant stated to OCR that the Student's walk from the classroom to her car was not supervised.
  - The District's December 8, 2017 written response to OCR stated that the Teacher walked the Student to the front gate, or used peers to support the Student getting to the Complainant without delay or distraction.
- Alternative seating.
  - The Complainant stated to OCR that the Student has no alternative seating such as a moveable chair or ball.
  - The District's December 8, 2017 written response to OCR stated that the Student had a cushion, and was allowed to stand when needed.

On October XX, 2017, there was a parent–teacher conference in which receiving extra time on math tests, providing an ice-cream reward and putting a Thera-band on the Student's chair for stretching and movement were discussed.

On January XX, 2018, at OCR's request, the District provided OCR with the Student's disciplinary records which showed that there were no disciplinary reports for the Student for the 2017-2018, or any other school year. The District stated to OCR that prior to the OCR Complaint, the Complainant did not file any internal, written complaints with the District.

## **Legal Standards**

### **FAPE (Alleged Failure to Implement Section 504 Plan)**

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

### **Disability Discipline**

The Section 504 regulations, at 34 C.F.R. § 104.35(a), require school districts to evaluate any student who, because of disability, needs or is believed to need special

education or related aids and services before initially placing the student and before any subsequent significant change in placement. Subsection (c) requires that placement decisions 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 that is carefully considered and documented. Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. 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 act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a disabled student from his or her program for more than 10 consecutive days, or for a total of more than 10 cumulative days in a school year under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

## **Analysis**

The Section 504 regulations, at 34 C.F.R. § 104.33, require Districts to provide a FAPE to all students with disabilities in its jurisdiction. Here, the Student had a Section 504 Plan which was designed, based on the Student's individual needs and disability, to provide her with a FAPE, when implemented. The information obtained during OCR's investigation to date showed that it was the Complainant's position that the majority of accommodations in the Student's 504 Plan were not being implemented. The District's position was that the provisions of the 504 Plan were being implemented with fidelity. OCR carefully reviewed each provision of the Section 504 Plan raised in this case. Information obtained by OCR showed that with regard to alternative seating, such as an exercise ball, round bottom chair, or moveable chair, the 504 Plan was not implemented as the District's written response to OCR stated only that the Student had received a cushion. In addition, the 504 Plan provision regarding use of a timer to report progress to the Teacher was not implemented by the Teacher until October XX, 2017. Information obtained by OCR showed that there was dispute with regard to implementation of several additional provisions of the Section 504 Plan, such as ensuring that the Student went from the Teacher to the Parent without distraction when the school day ended.

Regarding discipline, the Student's discipline report showed that she had no disciplinary record. The Complainant stated to OCR that minor misbehaviors were not ignored pursuant to the Student's 504 Plan. The District stated to OCR that behaviors that were not ignored were not minor, such as throwing hard objects from a second story balcony, and standing on top of a toilet. Because these incidents were potentially harmful to the Student or to others, OCR considered the Teacher's decision to respond to them to be reasonable and not a failure to implement this provision of the Section 504 Plan.

## **Conclusion**

OCR has not yet completed its investigation. To do so, OCR would need to interview additional School administrators, teachers and other staff, and review additional data. However, the information gathered to date raised OCR concerns that some provisions of the Student's Section 504 Plan were not implemented, possibly denying the Student a FAPE, as required under the regulations implementing Section 504 at 34 C.F.R. § 104.33. To address these concerns and prior to completion of the investigation, the District voluntarily agreed to the enclosed Agreement. The Agreement is aligned with the complaint allegations and the concerns raised during the investigation. The Agreement provisions provide that the School will: 1) Send a letter to the Complainant re-affirming its commitment to implement the Section 504 Plan; 2) Convene a Section 504 meeting to discuss implementation of the Section 504 Plan; and 3) Develop a plan to fully implement the Student's Section 504 Plan.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. OCR will monitor the implementation of the Agreement until the District is in compliance with Section 504, and Title II, and their implementing regulations which were at issue in the case.

OCR's resolution of 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 resolution of 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 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 Civil Rights Attorney Rhonda Ngom at rhonda.ngom@ed.gov.

Sincerely,

/s/

Brian Lambert  
Acting Team Leader

cc: XXXXXX XX XXXXX, Esq.

Enclosure