



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 19, 2019

**SENT VIA ELECTRONIC MAIL**

Director Jake Fuller  
Lassen Antelope Volcanic Academy Charter School  
22630 Antelope Blvd.  
Red Bluff, CA 96080  
[jfuller@antelopeschools.org](mailto:jfuller@antelopeschools.org)

(In reply, please refer to case no. 09-18-1660)

Dear Director Fuller:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Lassen Antelope Volcanic Academy Charter School (School). The Complainant alleged that the School discriminated against the Student on the basis of disability. Specifically, OCR investigated the following issues:<sup>1</sup>

1. Whether the School failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's Individualized Education Program (IEP).
2. Whether the School failed to provide the Student with a FAPE by failing to follow adequate evaluation and placement procedures before changing the Student's placement.<sup>2</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

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<sup>1</sup> OCR previously informed the School of the identities of the Complainant and Student in its notification letter. OCR has not included their identities in this letter to protect their privacy.

<sup>2</sup> On January 14, 2019, OCR notified the Complainant and District of this second issue.

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

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 a public education system, the School is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District and the Complainant. OCR also interviewed the Complainant as well as the School's 2017-2018 Director (Director) and 2017-2018 Special Education Specialist (Specialist). With respect to issue 1, based on this investigation, OCR found insufficient evidence that the School is out of compliance with Section 504, Title II, and their implementing regulation with respect to the issue investigated. With respect to issue 2, prior to the completion of OCR's investigation, the School and Antelope Elementary School District (District) agreed to enter into a resolution agreement with OCR which will address and resolve the concerns identified by OCR regarding issue 2.<sup>3</sup>

The applicable legal standards and facts gathered by OCR to date are summarized below.

## **Factual Findings**

### *Background*

The Student attended a charter middle school (School), grades five to eight, in the District and was in XXXXXXXX grade during the 2017-2018 school year. For the 2017-2018 school year, the Student had an IEP plan dated October X, 2017 (IEP Plan).

Further, for the 2017-2018 school year, the District told OCR that approximately 80 students attended the School, and that approximately 10 students had IEP plans.

### *Complainant's Alleged IEP Issues*

The Complainant stated to OCR that the School failed to implement the Student's IEP during the 2017-2018 school year by not providing (i) note taking support; (ii) adequate cues, prompts and reminders to ensure that the Student would remain on task, and (iii) one task or direction at a time. The Complainant state that the School may not have provided the Student preferential seating, but she was not sure as she had not observed such or discussed such with the Student's teacher. Further, the Complainant stated that the Specialist did not provide the Student sufficient support through the

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<sup>3</sup> OCR opened this complaint against the School, however during the investigative process, the District (in conjunction with the School) assumed responsibility for working with OCR to resolve the complaint.

monthly 30 minute consultation, including the School not ensuring (i) one-to-one math instruction; (ii) additional homework support; and (iii) information regarding Student's missing assignments.

*IEP Plan Accommodations and Services*

~General

OCR reviewed the October 2017 IEP Plan that is the subject of issue 1. On October X, 2017, the IEP team (which included the Complainant, Director, Specialist and Student's General Education Teacher) met, and the Complainant signed the IEP Plan on the same day. The IEP Plan stated that the Complainant received a copy of procedural safeguards. The Director stated to OCR that he distributed the IEP Plan to the Student's teachers.

~ Services

The IEP Plan stated that specialized academic instruction would be provided 30 minutes monthly and described such would be provided through "[c]onsultation provided to school staff." The IEP does not state that the Student would be provided one-to-one math instruction, additional homework support or that information regarding the Student's missing assignments would be provided to the Student.

The IEP meeting notes stated that the Student's teachers would upload homework weekly to Google Docs. The Director stated to OCR that the Student's assignments were listed on the School's Google classroom and that the Complainant had access to this School website. In addition, the Director stated (and the Specialist confirmed) that the Complainant had access to an on-line parent portal where the Student's assignment grades and missing assignments were listed.

The Specialist told OCR that she provided the IEP provision regarding "30 minutes of consultation" by meeting with the Student's teachers, Principal and Complainant as well as observing the Student in the classroom. The Specialist stated that during the consultation, she would discuss with the teachers the Student's accommodations and any needed modifications to improve the accommodations. Further, the Specialist stated she shared with the teachers via Google Docs a summary and explanation of the Student's IEP Plan accommodations. In addition, the Specialist stated that based on this monthly consultation, the Student was placed in an afternoon mathematics laboratory (Math Lab), an afternoon reading laboratory (Reading Lab) and an afternoon tutorial (Tutorial.) The District provided OCR with the Student's attendance information

showing that the Student attended the Math Lab, Reading Lab and Tutorial for the three trimesters during the 2017-2018 school year as follows:

- Math Lab: Trimester 1 (Mondays and Thursdays) and Trimesters 2 and 3 (Thursdays);
- Reading Lab: Trimesters 2 and 3 (Tuesdays); and
- Tutorial: Trimesters 1 and 2 (Mondays, Wednesdays, Fridays) and Trimester 3 (Mondays, Tuesdays and Fridays).

~Accommodations

OCR reviewed the following IEP accommodations with the Director and the Specialist:

- Note Taking Support: The IEP Plan stated the Student would be provided “note taking support” and did not state how such support would be provided. The Specialist stated that the Student’s teachers allowed the Student to use his cellular telephone to take pictures of the class notes that his teachers wrote on the board during class. In addition, many of the Student’s teachers provided notes on Google docs for all students in the class to access including the Student. The Specialist stated this note taking support was discussed with the Complainant during the IEP meeting.
- Cues Prompts and Reminders: The IEP Plan stated that the Student would be provided “[c]ues/prompts/reminders of rules” where the Student would use a “self monitoring system for on task behavior” and the IEP did not specify how such would be provided. The Director stated and the Specialist confirmed that each day the Student would pick up at the front office a reminder watch and on-task cards. The Director stated the reminder watch would buzz approximately every 15 minutes with messages to the Student such as “look up”, “pay attention” or “ask directions.” The Director stated and the Specialist confirmed that each day the Student would provide each of his teachers the on-task cards and the teachers would signed off indicating whether or not the Student was attentive and whether or not the Student was missing homework. The Director and Specialist also stated that the Student returned the completed on-task cards to the School office at the end of each school day. The Specialist stated that during the IEP meeting, the Student’s use of the on-task cards were discussed with the Complainant.
- One Task or Direction at a Time: The IEP Plan stated that the Student would be presented “one task/direction at a time” such that instructions would be “[s]hortened/simplified;” the IEP Plan provided no further detail how this accommodation would be provided. The Specialist stated that the teachers were aware of this accommodation and how it should be implemented. As an example,

though, the Specialist stated that some of the Student's teachers placed the class notes on Google docs, making it possible for the Student to receive one direction at a time.

- **Preferential Assigned Seating:** The IEP Plan stated the Student would be provided “[p]referential/assigned seating” and did not state how such would be provided. The Director stated that the Student was in his Study Skills class and the Student was seated either close to his desk or the Student was grouped with students with similar skills in that class. The Specialist stated that the teachers were aware of the need for the Student to be seated in a quieter environment to complete his class work or at the front of the class to pay more attention to the teacher.
- **Reduced or Shortened Assignments:** The IEP Plan stated the Student would be provided “[r]educed/shortened/assignments by 25%” and did not provide how this would be provided. The Director stated that during the IEP meeting, the options discussed with the Complainant were to reduce the Student's overall assignments by 25% (which would result in him getting less assignments) or reduce the Student's individual assignments by 25% (where the total number of assignments wouldn't decrease, but that Student would need to only complete 75% of each individual assignment). The Director stated that the Complainant chose to reduce the Student's individual assignments by 25%. The Director stated that the Student's teachers reflected the Student's grades based on the 25% reduction such that if the Student would complete 75% of the assignment the Student would receive a 100% grade.

*Master Agreement, Related IEP Provisions and SAWRFs*

The District provided OCR with the School Master Agreement for Independent Study (MA) signed by the Complainant on August XX, 2017. The MA stated that for the 2017-2018 school year, the Student was enrolled in a hybrid independent study program (HISP) instruction where he was required to attend school a minimum of three days per week from 8:00 a.m. to 12:30 p.m. In addition, the IEP Plan confirmed the Student's enrollment in a HISP. Further, the MA stated the Student may participate in an independent study program (ISP) only if the IEP team convenes to discuss the Student's needs and determines whether ISP is appropriate for the Student. The Director stated that only a few students were placed into full-time ISP, and those students usually lived a long distance from the School.

The MA stated the Student may be exited from the School if the Student's performance results in a completion rate of less than eighty percent of work assigned during a grading period and the Student is on contract three times in a trimester. The District confirmed in

its data request response to OCR that because of the 25% assignment reduction in the Student’s IEP Plan, the Student was required to complete 80% of his already reduced 75% assigned work.

The MA also stated that the Student’s assignments would be detailed in the Student Assignment and Work Record Form (SAWRF) at the beginning of each learning period, and it was to be completed and turned in to the assigning teacher. The District provided OCR with the Student’s SAWRFs for the 2017-2018 school year for each grading period which were signed by the Complainant. The SAWRFs show the percentage of work completed by the Student as follows:

Grading Period	XXXXXXXX	XXXXXXXX XXXXXX	XXXXXXXX XXXX	XXXXXXXX	XXXXXXXXXX XXXX
1	100%	100%	74%	100%	81%
2	84%	92%	71%	71%	85%
3	100%	100%	100%	100%	100%
4	100%	100%	100%	100%	100%
5	100%	100%	100%	100%	100%
6	100%	100%	100%	100%	100%
7	100%	43%	100%	87%	100%
8	92%	83%	100%	100%	86%
9	77%	100%	100%	100%	100%
10	91%	78%	100%	100%	100%
11	91%	78%	100%	100%	100%

*Letters of Progress*

*~First Progress Letter*

On March XX, 2018, the School issued the Complainant a letter of progress for the second and third trimesters and at the completion of the seventh grading period, entitled “Student/Parent Contract for Failure to Maintain Adequate Progress Step 1” (First Letter). The First Letter stated that for the period spanning February XX, 2018 to March X, 2018, the Student had failed to meet 80% completion because he had completed 43% of XXXXXXXX requirements. As detailed above, the Student’s SAWRF for the seventh grading period confirmed this grade. Further, the First Letter stated that the Student would be exited from the School or entered into full-time ISP if he failed to meet the 80% completion rate after the third grading period in a trimester.

In addition, the First Letter stated that parents are encouraged to take positive steps to assist their child/children, including as follows: (i) monitoring grades using the parent portal and School website; (ii) meet with ISP/home room teachers and core subject

teachers; and (iii) enroll in tutorial, if the student does not currently have a tutorial class. The Complainant and the Student signed the First Letter on March XX, 2018 verifying that they understood the Student's performance did not meet the School's minimum standards and would take the necessary steps to meet these standards.

The Director told OCR that, as stated in the MA, that the HISP schedule for students is such that students attend core classes in the morning 8:30 a.m. to 12:30 p.m. and received hands on instruction in the afternoon. With respect to the Student, the Director stated that during the 2017-2018 school year, the Student was enrolled in the Math Lab, English Lab and Tutorial in the afternoon. The Student's attendance records confirmed that he was enrolled in Math Lab and Tutorial all three trimesters as well as English Lab for the second and third trimesters.

~Second Progress Letter

On May XX, 2018, the School issued the Complainant a letter of progress for the third trimester and at the completion of the ninth grading period, entitled "Student/Parent Contract for Failure to Maintain Adequate Progress Step 2" (Second Letter). The Second Letter stated that for the period spanning April X, 2018 to May X, 2018, the Student had failed to meet 80% completion because he had completed 77% of XXXXXXX requirements. As detailed above, the Student's SAWRF for the ninth grading period confirmed this grade.

The Second Letter stated further that the Student would be exited from the School or entered into full-time ISP if he failed to meet the 80% completion rate at the conclusion of the 10th grading period in the third trimester spanning the dates of May X, 2018 to June X, 2018. Similar to the First Letter, the Second Letter also listed the positive steps to be taken (like monitoring grades, meeting with students, and enrolling the Student in tutorial) for the Student.

The Complainant and the Student signed the Second Letter on May XX, 2018 verifying that they understood the Student's performance did not meet the School's minimum standards and would take the necessary steps to meet these standards.

OCR notes that the District's data response did not include information showing that it conducted any further IEP meetings for the Student after the October X, 2017 IEP meeting including after issuing the First Letter or this Second Letter, which each addressed concerns about the Student's performance.

*~Final Progress Letter*

On June X, 2018, the School issued the Complainant a letter of progress for the third trimester at the completion of the tenth and eleventh grading periods, entitled “Student/Parent Contract for Failure to Maintain Adequate Progress Step 3” (Final Letter). The Final Letter stated that for the period spanning May X, 2018 to June X, 2018, the Student had failed to meet 80% completion because he had completed 78% of XXXXXXX requirements. As detailed above, the Student’s SAWRF for the tenth and eleventh grading periods confirmed this grade.

The Final Letter stated further that the Student would be exited from the School for failing to meet the standard 80% work completion for three consecutive grading periods as agreed to in the MA. The Complainant and the Student signed the Final Letter on June X, 2018 verifying that they understood the Student’s performance did not meet the School’s minimum standards.

The Director stated to OCR that when he provided the Final Letter to the Complainant, he informed her of her right to appeal the School’s recommendation that the Student be exited from the School. OCR notes that the District’s data response did not include information showing that it conducted any further IEP meeting for the Student prior to issuing this Final Letter or removing the Student from the School.

*Student Transferred*

The Complainant told OCR that the School exited the Student from the School because of its failure to implement the Student’s IEP. The Complainant stated she transferred the Student to a private school for the 2018-2019 school year because the School exited the Student.

The Director stated to OCR that based on the MA and as indicated by the Final Letter, the Student was exited from the School because the Student’s performance resulted in a completion rate of less than eighty percent of work assigned during three consecutive grading periods, specifically the ninth, tenth and eleventh grading periods where the Student was placed on contract for each of these grading periods. The Director stated that during the 2017-2018 school year, two XXXXXXX grade students were exited from the School and no XXXXXXX grade students were exited. The Director stated that the second XXXXXXX grade student who was exited did not have an IEP plan.

The Complainant told OCR that she would not want the Student to return to the School.



**Issue 1: Whether the School failed to provide the Student with a FAPE by failing to implement the Student’s IEP.**

**Legal Standards**

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.

**Analysis**

The Complainant alleged that the School failed to implement the Student’s IEP Plan accommodations during the 2017-2018 school year because the School did not provide: (i) note taking support; (ii) adequate cues, prompts and reminders to ensure that the Student would remain on task; and (iii) one task or direction at a time (IEP Accommodations). In reviewing the IEP Plan and discussing with the Director and Specialist how the IEP Accommodations were implemented, OCR determined that the IEP Accommodations were adequately implemented. The Director and Specialist described that each of the Student’s teachers were aware of each of the Student’s accommodations and that these teachers implemented these accommodations. For example, many of the teachers provided the Student with notes on Google docs, the

School provided the Student with the self-monitoring reminder watch and on-task cards, and the teachers reduced the Student's individual assignments by 25%. The Specialist described that the Student's teachers used reasonable methods to implement the IEP Accommodations.

With respect to the remaining alleged accommodations that the Complainant stated were to be implemented (i.e., the (i) one-to-one math instruction; (ii) additional homework support; and (iii) information regarding Student's missing assignments), OCR finds that the School provided these accommodations/services to the Student even though these accommodations were not specified in the Student's IEP Plan. With respect to the one-to-one math instruction and additional homework support, as described by the Director and the Specialist and confirmed by the District, the Student attended the Math Lab and Tutorial all three trimesters and the Reading Lab the second and third trimesters. Further, with respect to the information regarding the Student's assignments, the Director described that the Complainant had access to the Student's assignments, as well as his missing assignments, through Google classroom and the on-line parent portal.

In light of the above, OCR finds insufficient evidence that the School failed to provide the Student with a FAPE as the School implemented the Student's IEP Plan.

**Issue 2: Whether the District failed to provide the Student with a FAPE by failing to follow adequate evaluation and placement procedures before changing the Student's placement.**

**Legal Standards**

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**

As noted above, OCR was not provided with any information to indicate that the School convened an IEP meeting when it raised concerns regarding the Student's performance in the First Letter and Second Letter. OCR further notes that no IEP meeting was held even though the First Letter and Second Letter specifically indicated that the Complainant should "meet with ISP/home room teachers and core subject teachers." Further, the School did not convene an IEP meeting prior to issuing its Final Letter where it removed the Student from the program.

Removal of the Student from the School is considered a significant change of placement. OCR is concerned that the School did not conduct IEP meetings for the Student after issuing these letters to determine whether further accommodations were required prior to exiting the Student. Prior to the completion of this investigation, however, the District and School expressed an interest in resolving this matter and OCR determined that it was appropriate to do so. The District thereafter entered into the enclosed Resolution Agreement on March 18, 2019, in accordance with Section 302 of OCR's Case Processing Manual.

Through the Resolution Agreement, the District agreed to the following: (i) the School will develop policy and procedures to conduct IEP or Section 504 meetings for students with IEP plans or Section 504 plans when that student fails to meet the standard 80% work completion in a grading period and prior to exiting the Student from the School for failure to meet the standard 80% work completion; and (ii) the District shall provide training on these IEP and Section 504 policies and procedures to School staff who participate in IEP and Section 504 plans. The School will also provide notice of these policy and procedures to parents with students on IEP or Section 504 plans.

Accordingly, OCR did not complete its investigation or reach conclusions as to whether the School complied or failed to comply with Section 504 or Title II with respect to the issue 2.

## **Conclusion**

This concludes OCR's investigation of the complaint and should not be interpreted to address the School's or 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.

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 School or 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.

The complainant has a right to appeal OCR's determination in issue 1 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 during this investigation. If you have any questions, please contact Genevie Gallegos, Civil Rights Attorney at 415-486-XXXX or [genevie.gallegos@ed.gov](mailto:genevie.gallegos@ed.gov).

Sincerely,

/s/

Naghmeh Ordikhani  
Team Leader

cc: Paul R. Gant, Attorney at Law  
Kingsley Bogard, LLP