



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 13, 2019

Frances L. White, Ph.D.  
Acting Chancellor  
Peralta Community College District  
333 East 8<sup>th</sup> Street  
Oakland, California 94606

(In reply, please refer to case no. 09-18-2156.)

Dear Acting Chancellor White:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Peralta Community College District (College District). The complaint alleged that the College District provides a public transportation pass to all students; however, students who, because of disability, must use a paratransit system in order to access public transportation do not receive the benefit of this pass.

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 a public college district, the College District is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the College District. After careful review of the information gathered in the investigation, we concluded that the College District violated Section 504 and Title II and their implementing regulations with regard to the issue OCR investigated. This letter summarizes the applicable legal standards, the facts gathered during the investigation, OCR's conclusions, and the terms of the resolution reached with the College District.

*Issue 1: Whether the College District provides a public transportation pass to all students; however, students who, because of disability, must use a paratransit system in order to access public transportation do not receive the benefit of this pass.*

### Legal Standard

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) and 28 C.F.R. § 35.130(b)(1) a recipient public college district 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; afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; or provide a qualified disabled individual with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

### Factual Findings

The College District requires all students enrolled in six or more units in any semester to pay an "AC Transit EasyPass Fee," for which they receive a transit bus card usable for unlimited transportation on local buses. The complaint alleged that because of disability, some students do not receive the benefit of this transit card because they cannot use the local buses, and use a paratransit service, East Bay Paratransit, instead. The complaint alleged that the transit bus card cannot be used on paratransit and that, as a result, some students with disabilities pay almost seven times as much to ride public transportation as students without disabilities pay.

Under a California community college district fee authorization statute, community college districts may, but are not required to, impose a fee on students and employees for the purpose of reducing fares for services provided by common carriers or municipally owned transit systems to these students and employees. CAL. EDUC. CODE SEC. 76361(a). Community college districts may either charge students who want to use a transit pass a fee or, if a majority of students at a campus of the college district vote in an election to approve it, then a district may charge a fee to all students. The statute does not refer to students with disabilities or exempt a community college district from arranging for reduced fares for students with disabilities, nor does it allow a waiver of the fee for such students.

AC Transit is a public, municipal transit system that operates fixed-route bus lines. According to the AC Transit website, colleges and universities, employers, and residential communities can contract with AC Transit to receive a discounted EasyPass usable for unlimited rides anywhere serviced by AC Transit, for their students, employees, or residents. AC Transit offers a monthly pass, separate from the EasyPass, to any adult rider at a price set during the investigation at \$84.60 for unlimited rides in the East Bay for a 31-day period; \$162.00 with transbay access.

Individuals who provide documentation establishing a qualifying disability may obtain a monthly bus pass for \$30 and are subject to a surcharge for transbay trips.

In elections held in May 2009 and May 2016 College District students approved a proposition that required all College District students carrying six or more units to pay each semester a fee, which during the investigation was \$41, for which they receive an EasyPass. The EasyPass enables students to ride all AC Transit bus lines, including local and Transbay service (excluding the Dumbarton Express), at all times, via a personalized "Clipper Card."<sup>1</sup> The College District's website estimated approximately 13,000 students were eligible for the EasyPass for the Spring 2018 semester. The EasyPass fee is nonrefundable unless a student falls below six units before the last day to drop full-term classes.

The College District Vice Chancellor for Student Affairs (Vice Chancellor) informed OCR that once a student enrolls in six or more units, the College District's system automatically identifies the student to be charged the EasyPass fee, as part of his/her fees and tuition. Students who pay the EasyPass fee are notified that they can pick up the pass at a college's Cashier's Office.

The EasyPass arrangement is set forth in an agreement between AC Transit and the College District. Pursuant to this agreement, AC Transit discounts the EasyPass to the College District based on the frequency and concentration of bus service near campuses and the number of eligible students. AC Transit offers to undertake certain activities for the College District, including conducting student surveys about transportation, holding the student election, identifying a College District EasyPass coordinator, taking photos for the EasyPass, providing free marketing services and materials and EasyPass information for use on campuses, and mailing the EasyPass to campus cashier offices. The College District, under the agreement, must distribute the EasyPass to students, appoint a site coordinator, and promote the EasyPass while allowing AC Transit access to EasyPass-eligible students' email, postal mail, and allow AC Transit personnel access to campuses to provide information and to conduct surveys allowed under the federal Family Educational Rights and Privacy Act.

The College District notifies its students about the EasyPass by providing a description of the EasyPass and the process to obtain it as part of the mandatory, on-line new-student orientation presentation, and by posting AC Transit-produced posters and flyers at campus locations such as the Welcome Center, in Counseling Services offices, and with campus Student Ambassadors. It maintains an AC Transit EasyPass Frequently Asked Questions webpage on its website. OCR located at least one reference to the EasyPass in on-line versions of each of the four College District college's catalogs and class schedules.

The College District collects each semester the \$41 EasyPass fee from students carrying six or more units and pays AC Transit a fixed price, which at the time of the

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<sup>1</sup> The Clipper Card is an all-in-one reloadable contactless smart transit card used for electronic transit fare payment on several transit systems in the San Francisco bay area.

investigation was \$40.79, per EasyPass per semester in installments: a first College District payment based on about half of the estimated total due, and the second College District payment based on the enrollment number of eligible students within 30 days of the end of the Fall and Spring semesters.

AC Transit, in cooperation with another bay area public transportation system, operates East Bay Paratransit, which provides the parallel paratransit service for eligible individuals whose disabilities prevent them from using the fixed-route bus lines. AC Transit's website described paratransit as a "safety net" for people who, due to their disability, are unable to ride regular buses and trains some or all of the time. It is generally a shared ride service that picks up riders at their door or the curb and takes them to their destination, with possible other stops along the way. Riders who need assistance beyond what the driver provides may bring an assistant along at no additional charge. Riders pay for each ride with cash or pre-paid tickets.

East Bay Paratransit riders must first apply and be certified as eligible based on criteria listed on AC Transit's website as: having a disability that prevents a rider from boarding, riding, or getting off a bus or train, without the help of someone else; wanting to use a service that is not accessible; or having a disability that prevents a rider from getting to and from a bus or train stop. A fare increases by distance, which during the investigation started at a \$4 minimum and increased to an approximately \$10 maximum fare. No East Bay Paratransit monthly or other discounted pass is available, and East Bay Paratransit does not accept Clipper Cards.

College District students may apply for an exemption from the EasyPass fee, either before or after the EasyPass fee is paid, using an exemption form that lists several reasons, including disability. The College District provides a link to the exemption form on the Forms webpage of the College District's Admissions & Records webpage and on its "Fee Information" webpage, but otherwise does not describe or publicize the EasyPass fee exemptions. The Vice Chancellor informed OCR that it is common knowledge among students that the EasyPass fee exemption form exists. The College District provided OCR with copies of fee exemption forms from the 2016-17 and 2017-18 school years, 33 of which were completed by students claiming disability as the basis for the exemption. The Vice Chancellor informed OCR that the exemption requests are first reviewed at the campus level, and a determination is made by each college's Vice President of Student Services, followed by the Vice Chancellor's review and final determination.

The complaint estimated that students without disabilities using the EasyPass pay about 1/7th of the fare price for their transportation needs on AC Transit's bus lines than students who must ride East Bay Paratransit pay. OCR found that the actual disparity was difficult to precisely calculate given the EasyPass feature of unlimited rides covered for one discounted price, and the uncertainty in estimating the likely minimum number of East Bay Paratransit trips to and from school, and elsewhere in the Bay Area, a disabled student might take in a month. OCR estimated, however, that a student who

travels to school three times a week using the minimum paratransit fare would incur charges of at least \$328 over the course of a semester.

### Analysis and Conclusion

Pursuant to the regulations implementing Section 504 and Title II, the College District is prohibited from providing a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. See 34 C.F.R. section 104.4(b)(1)(iii) and 28 C.F.R. section 35.130(b)(1)(iii).

OCR determined, first, that the EasyPass program is a benefit that the College District offers to its students. The College District informed OCR that it acts only as a pass-through for a benefit provided by AC Transit. The evidence established, however, that the College District elected to collect a mandatory fee to fund the program from all students taking six or more units, as part of the cost of enrollment, whether or not they choose to participate. The College District provides information about the program in its online orientation for new students, provides AC Transit with names and a digital photo ID file for its students, and distributes the EasyPass itself at colleges' Cashier's Offices. High level college and College District administrators make determinations on student EasyPass fee exemption requests. OCR concluded that these actions established that the EasyPass program is a benefit provided by the College District to its students, even though AC Transit creates the passes and provides the actual transportation services.

The evidence at the time of OCR's investigation showed that the College District provided students taking six or more units the benefit of reduced-cost access to public transportation at a cost of \$41 per semester, or roughly \$10.25 per month, less than ten percent of the cost of the comparable AC Transit pass available to members of the general public, and slightly more than the cost of the least costly single round-trip East Bay Paratransit trip.

The evidence also showed that College District students taking six or more units who, due to their disabilities, must use East Bay Paratransit and cannot use the EasyPass on East Bay Paratransit, receive no such benefit or savings. The provision of a bus pass that cannot be used by persons with disabilities is not equally effective in providing them the transportation benefit. For this reason, OCR concluded that the College District is not providing an equal opportunity to gain the same benefit to students with disabilities in violation of Section 504 and Title II, and their implementing regulations.

When OCR notified the College District of its findings, the College District, without admitting to any violation of federal law, voluntarily agreed to enter into the enclosed Resolution Agreement with OCR to resolve the complaint. Under the terms of the Resolution Agreement, the College District will administer a one-time refund program to reimburse students who used East Bay Paratransit and were unable to participate in the EasyPass program during the 2017-18, and part of the 2018-19 academic years. The College District, if it continues to participate in the EasyPass program, will also reimburse

requesting students' East Bay Paratransit transportation costs related to education-related trips.

This concludes OCR's investigation of this complaint and should not be interpreted to address the College District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. Based on the commitments made in the Agreement, OCR is closing this complaint as of the date of this letter and notifying the Complainant concurrently.

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

Please be advised that the College 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact the case resolution team.

Sincerely,

/s/

Kana Yang  
Team Leader

cc: Mary Hernández (via electronic mail)  
College District Counsel

Enclosure