



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

March 25, 2019

**VIA ELECTRONIC MAIL**

Doc Ervin  
Superintendent, Bakersfield City School District  
1300 Baker St.  
Bakersfield, CA 93305  
supt@bcsd.com

(In reply, please refer to case no. 09-19-1166)

Dear Superintendent Ervin:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Bakersfield City School District (the District). The Complainant alleged that the District discriminated against the Student on the basis of disability.<sup>1</sup> Specifically, OCR investigated whether the District failed to evaluate the Student in a timely manner even though it had reason to believe that the Student needed special education or related services because of a disability, which resulted in the Student not receiving necessary services and accommodations for his disability.

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

To investigate this complaint, OCR reviewed information provided by the Complainant and the District. Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

**Legal Standards**

---

<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.

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(a) of the regulations requires school districts 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. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. In determining whether a district or school has conducted an evaluation in a reasonable period of time, OCR takes into consideration the 60-day timeframe provided by the IDEA regulations and the district or school's own procedures.

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.

#### Facts Gathered to Date

During the 2018-19 school year, the Student was a XXXXX grade student at a school in the District.

On February X, 2017, when the Student was in XXXXX grade, the Complainant made a written request to have the Student evaluated for special education services. The Complainant's request stated that the Student had difficulty understanding what was being taught in class and following auditory directions from the teacher. On February XX, 2017 the District issued a notice of refusal for the request for a special education assessment. The notice explained that the school had conducted a Team for Student Success (TSS) meeting and that the team had agreed that the Student was having difficulty blending letter sounds. The meeting notes state that the Student was diagnosed with ADHD in November 2016. The team agreed to provide daily work with an

intervention specialist and the notice stated that the team would monitor the Student's progress for six weeks and then would reevaluate the request for an assessment.

The District produced documentation that a TSS review meeting was held on May X, 2017. The meeting notes reflect that the School would continue with Tier I interventions. There is no mention in the notes of a special education assessment.

The District also produced documentation of a TSS meeting on November XX, 2017 and a follow up review meeting on May XX, 2018. The notes indicate that the team decided to utilize Tier II interventions and that the Student would continue to work with an intervention specialist. The notes did not mention a special education assessment. The Complainant told OCR that she asked for a special education evaluation again in approximately February 2018 and was again told that he did not qualify for an IEP so would not be given special education services.

The Student received services from an intervention specialist throughout XXXXXX grade. The Complainant told OCR that when the Student started XXXXX grade in August 2018, the Student did not receive intervention services because no staff were available for XXXXX graders. The District told OCR that interventions for XXXXX grade groups were scheduled to begin after Thanksgiving.

On October XX, 2018, the Complainant again requested a special education evaluation. On February X, 2019, an IEP was completed that found the Student eligible for special education services for a specific learning disability in the area of Reading and Reading Comprehension.

### Analysis

Based on the facts gathered to date, OCR was concerned that the District failed to evaluate the Student in a timely manner. The Complainant presented evidence of the Student's disability in February 2017, and the evaluation did not take place until November 2018. The notes from the February 2017 meeting indicate that a special education assessment would be reconsidered at future meetings, but OCR did not find written evidence that this occurred. There was also no evidence gathered to date that the District considered a Section 504 plan at any point in this process. Furthermore, intervention services that were determined by the TSS team to be appropriate for the Student were not provided to the Student for the first three months of the 2018-19 school year, apparently because staff were not available.

In order to reach a finding as to the District's compliance with Section 504 and Title II, OCR would need to conduct additional interviews with School and District staff. The District, however, has now conducted a special education assessment. Prior to OCR completing its investigation, the District also expressed an interest in a voluntary resolution of the matter. OCR therefore determined that a voluntary resolution agreement under Section 302 of the Case Processing Manual, as described below, would be appropriate in this case.

### Overall Conclusion

This concludes the investigation of this complaint. To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement) which is aligned with the complaint allegations and the information obtained by OCR during its investigation. The Agreement provides that the IEP team will meet to discuss what, if any, compensatory services are appropriate due to the delay in evaluating the Student. The Agreement also provides that the School will provide training for its staff on Section 504 procedures, including evaluating students in a timely manner.

Based on the commitments made in the enclosed 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 Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

OCR's determination in this matter should not be interpreted to address the District 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, 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-XXXX or at [blake.thompson@ed.gov](mailto:blake.thompson@ed.gov).

Sincerely,

/s/

Anamaria Loya for Zachary Pelchat  
Team Leader

Enclosure

cc: Kidd Crawford, Counsel for the District