



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 19, 2019

**VIA ELECTRONIC MAIL**

Ms. Patricia Escalante  
Superintendent  
Hermosa Beach City School District  
1645 Valley Dr.  
Hermosa Beach, California 90254-2921

(In reply, please refer to case no. 09-19-1214.)

Dear Superintendent Escalante:

On January 22, 2019, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Hermosa Beach City School District (District). The complainant<sup>1</sup> alleged that the District discriminated against his son (Student) based on disability by failing to implement the Student's Section 504 plan and thereby denying the Student a free appropriate public education (FAPE).

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR that it was amenable to resolving the complaint in this manner. OCR and the District entered into the attached agreement to resolve the complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 and Title II. The applicable legal

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<sup>1</sup> OCR notified the District of the complainant's and Student's names at the beginning of the investigation. We are withholding their names from this letter for privacy reasons.

standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

### 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. 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.

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.

### Facts

OCR's preliminary investigation showed the following:

The Student was enrolled in the XXXXXXXX grade at a school in the District (School) during the 2018-2019 school year and has had a Section 504 plan since the XXXXXXXX grade. The Student's Section 504 plan was updated following changes to his health on September XX, 2018. His Section 504 plan included a provision requiring the District to make "immediate contact with parents when assignments are missing and/or incomplete." However, the complainant alleged to OCR that some of the Student's teachers had failed to notify the Student's family (Family) that the Student had accumulated a number of missing assignments.

On October XX, 2018, the Family requested that the Student be assessed for an Individualized Education Program (IEP) because they believed that the Student's Section 504 plan no longer met his needs due to changes in his health. On November X, 2018, the District denied the request due to its perspective that the Student was able to access the general education curriculum and was earning passing grades in his classes. The District convened another Section 504 meeting on November XX, 2018 and made further revisions to the Student's Section 504 plan. These revisions included a deletion to the aforementioned provision regarding immediate contact with the parents about the Student's missing and/or incomplete assignments.

OCR noted in its review of the District's Section 504 plan template that it included blanks for eight major life activities. On the Student's September XX, 2018 and November XX, 2018 Section 504 plans, the District only placed check marks next to the major life activity of "learning." However, in its narrative description of the impact of the Student's disabilities, the District stated the Student had difficulty focusing, following directions, maintaining optimal blood sugar and completing homework/class assignments, and that his disabilities affected his ability to "perform to his full potential."

On January X, 2019, the complainant again requested that the Student be assessed for an IEP, and the District granted the complainant's request. Shortly thereafter, on January XX, 2019, the Student's mother requested that the Student be placed on home and hospital instruction due to further health complications. On February XX, 2019, the Student began home and hospital instruction, which, as of May XX, 2019, is still in effect. On March XX, 2019, the District convened an IEP meeting to discuss the results of the Student's assessment, in which the Student was found ineligible for an IEP due, in part, to his satisfactory academic progress.

In April 2019, OCR contacted the District to discuss the complaint, and the District indicated its interest in voluntary resolution. As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District entered into the attached agreement, signed May 9, 2019, to resolve the complaint. The agreement requires the District to (1) hold a Section 504 meeting for the Student and discuss a series of topics, including whether further assessment is needed to fully and correctly identify the Student's disabilities and accommodate the Student's behaviors; (2) develop a support plan for the Student and hold a support team meeting; (3) draft and circulate guidance that clarifies the District's responsibilities under Section 504; and (4) revise its Section 504 plan template. Since the District agreed to voluntarily resolve the complaint, OCR did not complete its investigation or reach conclusions regarding the District's compliance with Section 504 and Title II with respect to this complaint. OCR will monitor the District's implementation of the agreement.

This concludes OCR's investigation of the complaint and 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. OCR is closing this complaint as of the date of this letter and notifying the complainant by concurrent letter.

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.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process.

Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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

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

Sincerely,

/s/

Zachary Pelchat  
Team Leader

cc: XXXXXX XX XXXXXXXX, Atkinson, Andelson, Loya, Ruud & Romo