



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

August 13, 2019

**SENT VIA ELECTRONIC MAIL**

Mr. Jorge Aguilar  
Superintendent  
Sacramento City Unified School District  
[superintendent@scusd.edu](mailto:superintendent@scusd.edu)

(In reply, please refer to case no. 09-19-1260)

Dear Superintendent Aguilar:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Sacramento City Unified School District (District) filed on February XX, 2019. The Complainant alleged that the District discriminated against him<sup>1</sup> on the basis of disability. Specifically, OCR investigated whether the District failed to provide the Complainant with disability-related accommodations necessary for him to participate in his child's (the Student) educational program.

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.

OCR began its investigation by gathering and reviewing documents and correspondence provided by the Complainant and the District. Prior to OCR completing its full investigation, the District voluntarily agreed to address OCR's area of concern with respect to issue that was under investigation. This letter summarizes the applicable legal standards, the facts gathered to date during the investigation, and the terms of the resolution reached with the District.

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<sup>1</sup> OCR notified the District of the identity of the Complainant when the investigation began, and we are withholding names from this letter to protect personal privacy.

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

### Legal Standard

The Section 504 regulations at 34 C.F.R. § 104.4 provides that no qualified individual with a handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives Federal financial assistance.

34 C.F.R. § 104.4(b)(1)(iii) provides that a recipient may not afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. This equally effective requirement is explained further below. For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. 34 C.F.R. § 104.4(b)(2)

The regulations for Title II of the Americans with Disabilities Act provides a similar requirement at 28 C.F.R. § 35.130(a). It states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

It additionally states that a recipient may not afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. 28 C.F.R. § 35.130(b)(1)(ii) It further provides that a recipient may not provide 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. 28 C.F.R. § 35.130(b)(1)(iii).

With respect to communication, it states that a public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1).

A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. 28 C.F.R. § 35.160(b)(1).

Additionally, the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the

requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. 28 C.F.R. § 35.160(b)(2).

### Facts Gathered to Date

Prior to the filing of the OCR complaint, the Complainant and the District engaged in conversations and written communications about a number of issues related to the Student's access to the educational program. The District initiated its student study team (or SST) process in the Spring of the 2017-18 school year for the Student.

According to the Complainant, the District ignored his request for a disability-related accommodation. Specifically, on December XX, 2018, the Complainant sent an email to the School Principal and the Student's teacher expressing his preference for written communication rather than in-person meetings as an accommodation for his disability. He explained in the email that it would allow him to process information in a timely and civil manner while still engaging in the Student's education. In the email, he explained that while he had said during meetings before December XX, 2018 that he preferred written communication, he had not previously explicitly linked this preference to his disability.

Email communication between the Complainant and various District employees, including emails in which the Complainant referred to his accommodation request, continued after December XX, 2018, and on January XX, 2019, the District's Risk & Disability Management Coordinator (Coordinator) emailed the Complainant about his accommodation request. In that email, the Coordinator referred to the interactive process meeting as an opportunity for him and District employees to informally exchange information and ideas regarding his accommodation request. The email provided a phone number for the Complainant to respond to, or in the alternative, the offer for the Complainant to email a response.

The Complainant's January XX, 2019 reply email to the Coordinator, and several other District employees, contained numerous questions, along with informing the Coordinator that his disability diagnosis had already been informally shared with the District, and reminding the Coordinator of his communication accommodation request. He asked, in his email, for the Coordinator to request any additional specific information from him if any was needed about his accommodation request.

Among other emails between the Complainant and the Coordinator, on January XX, 2019, the Coordinator emailed the Complainant, describing the interactive process meeting as being an option should the Complainant want to meet and discuss. The Coordinator did not offer this discussion to take place in writing, such as by email, when she emailed him this information, and answered some of the Complainant's questions about the accommodation process. The Complainant expressed in an email to the Coordinator his

view that if the District had decided his accommodation request was unreasonable, it should notify him of that decision, and further propose an alternative accommodation.

By March 2019, the District was preparing to hold a meeting under the Individuals with Disabilities Education Act, for discussions about an individual educational plan (IEP) for the Student, that was scheduled for March XX, 2019. The Coordinator emailed the Complainant on March X, 2019, asking him if he would be available after the IEP meeting to discuss separately his communication accommodation request. The Complainant replied, telling the Coordinator that back-to-back, face-to-face meetings were not appropriate, and asking the Coordinator to email him any questions she might have asked him in a meeting about his disability diagnosis. The Coordinator's response by email was that she did not have any questions about his diagnosis, but wanted to further discuss his accommodation request. She asked him to let her know if he needed further assistance, but her email did not offer to further discuss his accommodation request by email. No subsequent emails between the Complainant and the District showed the accommodation request issue had been resolved.

### Analysis and Resolution

Based on the evidence gathered to date, OCR noted that the interactive process to address the Complainant's communication accommodation request began in December 2018 and, although ongoing, has not yet been completed, which gave rise to some OCR compliance concerns.

To reach a determination about whether the District failed to provide the Complainant with disability-related accommodations necessary for him to participate in the Student's educational program, OCR would need further information from the District; namely interviews with several employees for details surrounding the Complainant's communication accommodation request. However, prior to the conclusion of OCR's investigation, the District indicated its interest in voluntary resolution regarding the issue, and OCR agreed that such a resolution would be appropriate to resolve the issue. On August 12, 2019, the District entered into the attached Resolution Agreement (Agreement), which when implemented, is intended to resolve the concerns identified by OCR regarding the issue that was under investigation. Under the terms of the Agreement, the District agreed to continue and conclude the District process that includes appropriate steps to ensure that communications with the Complainant are as effective as communications with others, including providing, where necessary, appropriate auxiliary aids and services to the Complainant to afford him an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the District. The District will also report within one calendar week of the District's conclusion of the process with documents supporting its determination regarding the Complainant's requested accommodation.

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. When fully implemented, the Agreement is intended to address the

complaint allegation. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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 District may not harass, coerce, intimidate, 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 about this letter, please contact the case resolution team.

Sincerely,

/s/

Kana Yang  
Team Leader

Enclosure

cc: Raoul Bozio  
In-House Counsel