



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

July 15, 2020

**VIA ELECTRONIC MAIL**

Mr. Brian Biedermann  
Interim Superintendent  
Stockton Unified School District  
701 North Madison Street  
Stockton, CA 95202-1634  
XXXXXXXXXXXXXXXX

(In reply, please refer to case no. 09-19-1306.)

Dear Interim Superintendent Biedermann:

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

1. Whether the District failed to provide the Student with a free appropriate public education (FAPE) by failing to implement the Student's Section 504 plan at an elementary school in the District.
2. Whether the Student was subjected to harassment based on disability and retaliation related to complaints made to the District from January through April 2019, and the District failed to respond promptly and equitably to complaints of such harassment and retaliation;
3. Whether the District denied the Student a FAPE by failing to implement her Section 504 Plan at a District high school during fall 2019; and
4. Whether the District denied the Student a FAPE by failing to timely evaluate her for special education and related services during spring semester of the 2018-2019 school year.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations. Section 504 prohibits discrimination on the basis of

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<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.

disability in education programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives funds from the Department and is subject to Section 504 and Title II.

To investigate this complaint, OCR has gathered evidence by reviewing documents provided by the District and the Complainant, and statements provided in the District's initial data response from May 2019, in addition to the information provided by the District in supplemental data responses dated November 8, 2019 and December 9, 2019. OCR also interviewed the District's Executive Director of Constituent Services (Director) and the Complainant. OCR identified compliance concerns with regard to all four issues opened for investigation in this case. The applicable legal standards, the facts gathered by OCR, and the reasons for OCR's determinations are summarized below.

### **Facts Gathered to Date**

In June 2020, the Student completed her XXXXXX year at a high school within the District (High School). She was initially found eligible for special education and related services through an individualized education program (IEP) in May 2015, when she was XX years old. In April 2018, the District conducted an evaluation and determined that the Student was no longer eligible for services under the Individuals with Disabilities Education Act (IDEA), and the Student was exited from special education.

On April XX, 2018, following her exit from services under the IDEA, the District developed an initial Section 504 plan for the Student. The Section 504 plan stated that the Student had an impairment in auditory processing that impedes her learning. Relevant to this case, the Student's Section 504 accommodations included the following: seating assignments; providing peer tutoring; reducing homework assignments – permission to rework missed problems for a better grade; giving take-home practice tests; sending weekly progress reports home from all teachers; and providing the Student with a homework assignment notebook.

#### *2018-2019 School Year (XXX Grade)*

During the 2018-2019 school year, the Student was enrolled as an XXX grader at an elementary school (School) within the District. The OCR complaint alleged that during spring 2019, parts of the Student's Section 504 plan were not implemented by the School. Specifically, the Complainant (the Student's grandmother) told OCR that progress reports were not provided weekly; that the Student's teachers did not sufficiently reduce her homework assignments, resulting in the Student staying up late many nights attempting to complete assignments; and that the Student did not receive tutoring as required by her Section 504 plan. With respect to reducing assignments, the Complainant told OCR that the teachers did this to some extent, but that they also told her that

they did it for all students not what they specifically did for the Student. With regard to the accommodation of weekly progress reports as required by the Section 504 plan, the complaint states that the Complainant had received a total of five progress reports for the school year and those had only come following multiple complaints made by the Complainant.

In its initial narrative response, the District disputed the Complainant's allegation that progress reports were not sent home. As support, the District provided OCR copies of progress reports it maintains were sent home with the Student on February XX, March X, April X, X, and XX, 2019. The District told OCR that the School had challenges ensuring the Student was provided the progress reports due to her attendance and that the Complainant and the Parent were shown how to access the reports online. No change was made to the Student's Section 504 plan during the Section 504 meeting of April XX, 2019, which required progress reports be sent home weekly by all teachers weekly. There is no mention in the Section 504 plan of online access to progress reports as an alternative means of access for the family; nor is the Student's attendance raised within the Section 504 documents provided to OCR.

Over the course of the 2018-2019 school year, the Complainant reported to OCR that she submitted multiple complaints to the District regarding the Student and the District failed to respond to them. According to the District, it did respond to the complaints; however, the District provided OCR with little documentation to show how they responded. In an interview with OCR, the Director reported that she was attempting to pull together records from the multiple meetings with the Complainant but that she was new to the position and that some records had been "mislocated."

The District reported to OCR that District staff, including the Office of the Ombudsperson, met with the Complainant and/or the Parent many time, including on October XX, 2018 and December X and X, 2018, but did not provide OCR with specifics as to what was discussed at the meetings nor any documentation. Rather, the District stated that the meetings occurred and that the subject of the Student's progress and concerns about the Student's Section 504 plan often came up during various meetings with the Complainant and/or the Parent.

The Complainant provided OCR with a copy of a written request for special education assessment dated January XX, 2019. The District reported to OCR that it initially denied this request via prior written notice (PWN). According to the Complainant, the District's denial did not come until March 2019, when the School Psychologist called the Complainant and the Parent, requested that they come to the School, and told the Complainant and the Parent that the denial was late when she provided them the notice. The District did not dispute this information and was unable to provide OCR with a copy of the PWN upon request.

On January XX, 2019, the Complainant submitted a complaint to the School alleging that the Student was physically assaulted by a staff member. The complaint did not specify whether the alleged incident was related to the Student's disability. The District reported that District staff met with the Complainant on January XX, 2019. The District did not provide OCR with documentation

of the meeting, the persons present at the meeting, the purpose of the meeting or whether any resolution was reached as a result of the meeting.

On January XX, 2019, the Complainant filed a complaint alleging that the School was not implementing the Student's Section 504 plan and that the Student was being denied the right to a public education.

On January XX, 2019, the Complainant filed a complaint alleging that the Student's teacher had harassed the Student when the Student requested the homework from the previous week during which the Student said she had been absent. A handwritten note on the complaint states "principal addressing issue w/ HR." OCR was not provided any other documentation related to this complaint.

The District provided data to show that meetings to discuss the Section 504 plan were scheduled for February X and X, 2019. OCR received no documentation of the meetings, including whether the Complainant or the Parent were in attendance.

On February XX, 2019, the Complainant filed a complaint alleging that during a meeting on how to improve the Student's grades, the XXXX teacher yelled at the Complainant saying she was tired of the Complainant bullying "them" and stormed out of the meeting. The District provided information to show that it informed the Complainant it had received her complaint and that the School principal would investigate the complaint pursuant to the District's uniform complaint procedures (UCP). OCR did not receive any information documenting this UCP investigation or indicating whether or how the investigation was completed, nor what findings were made as a result. The District reported to OCR that District staff met with the Complainant and/or the Parent on February XX, 2019. The District did not provide OCR with any documentation of the meeting.

The District reported to OCR that District staff met with the Complainant and/or the Parent on March XX, 2019. The District did not provide OCR with documentation of the meeting, the persons present, the purpose for the meeting, or whether any resolution was reached as a result of the meeting.

On March XX, 2019, the Complainant filed a complaint with the District alleging that several provisions in Section 504 plan, were not being implemented, including seating of the Student in class, peer tutoring, reducing homework assignments, and sending weekly progress reports. The District reported to OCR that District staff met with the Complainant and/or the Parent on March XX, 2019. The District did not provide OCR with documentation of the meeting, the persons present, the purpose for the meeting, or whether any resolution was reached as a result of the meeting.

According to the Complainant, she filed a disability-based discrimination complaint on March XX, 2019, to the District. The District did not provide OCR with documentation showing if it received this complaint or how, if, or when the District responded to this complaint.

The District reported to OCR that District staff met with the Complainant and/or the Parent on April X, X, and XX, 2019. The District did not provide OCR with documentation of these meetings.

On April XX, 2019, the District convened a Section 504 team meeting. Minimal adjustments were made to the Student's Section 504 plan. OCR was provided no notes from the meeting; however, according to the District, during the meeting the District agreed to conduct an assessment through an independent evaluator due to the Complainant's concerns regarding the Student's falling grades. The District reported that it provided an assessment plan shortly following the meeting. The assessment plan was not provided to OCR.

According to the District, on May X, 2019, it received the signed assessment plan from the Complainant and District staff met with the Complainant on May XX, 2019. The District did not provide OCR with documentation of the meeting.

In June 2019, after the 2018-2019 school year had ended, the assessment was conducted. In the assessment report, the assessor recommended that the IEP team consider eligibility under the category of Specific Learning Disability (SLD) as a student with dyslexia. The report also provided other recommendations for the Student, including the need for interventions and services in the areas of reading and writing.

#### *2019-2020 School Year (XXX Grade)*

On August X, 2019, the Student entered as a XXXXXX at the High School. The Complainant alleged that the Student's Section 504 plan was not implemented at the High School from the beginning of the 2019-2020 school year (the Student's XXX grade year) through the end of October 2019. Specifically, the Complainant was told by a faculty member that he had not received a copy of the 504 plan and suggested that the Student needed to advocate for herself and could use the Learning Center any time she chose to.

On October X, 2019, the District convened Part I of an IEP meeting to review the June 2019 evaluation and to consider the Student's potential eligibility for special education through an IEP. The team agreed that the Student qualified for an IEP under the qualifying category of SLD. The team made recommendations based on the results of the assessment, including that the Student be given extra time to process and complete assignments. The IEP team decided to reconvene for Part II of the meeting after the fall break, and at that time to develop goals, services, and a transition plan. According to the meeting notes, no date for Part II of the IEP was decided upon at that time.

The District told OCR that the Student's Section 504 plan was not received by the High School until October X, 2019, and that because the IEP meeting to review the independent assessment occurred the same day, the District did not provide teacher copies of the Section 504 plan and it was not implemented. The District told OCR that the Student's cumulative records, including her

special education file, were automatically routed to her school of residence within the District, though the Student was, in fact, enrolled in a different District high school.

The District reported to OCR that it has taken steps to develop a process to avoid recurrence of the misrouting of students' cumulative records, and provided to OCR an undated document titled "Process for Supporting Students Transitioning to New School Sites" that the District reported would be the basis for training for relevant site-based personnel.

On October XX, 2019, a Notice of Meeting was created for Part II of the IEP, and the meeting was convened on October XX, 2019. The October XX, 2019 IEP identified areas of need as reading comprehension, writing, math-Algebra, and transition. The IEP team developed goals in the areas of assignment completion, transition, mathematics, sentence composition, and vocabulary development. The offer of placement included two resource specialist program classes and two general education classes in addition to 80 total minutes of college and career awareness per month.

### **Legal Standards**

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a 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. School districts may implement a Section 504 plan developed in accordance with these requirements, or an individualized education program developed in accordance with the IDEA to meet 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 school 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 section 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. Under subsection (c), 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.

OCR evaluates the appropriateness of a school district's response to notice of disability discrimination by examining reasonableness, timeliness, and effectiveness. What constitutes a reasonable response will differ depending upon the circumstances. However, in all cases the district must conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, remedy the effects of the discrimination, and take steps to prevent the discrimination from recurring.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate discrimination and will be responsive to any student reports of discrimination. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Additionally, under the Section 504 regulations, at 34 C.F.R. § 104.61, a school district must comply with certain procedural provisions identified in the regulations implementing Title VI of the Civil Rights Act of 1964. Consistent with 34 C.F.R. § 100.6(b), a school district must keep timely, complete, and accurate records so that the Department may be able to ascertain whether the school district has complied or is complying with Section 504. For example, school districts should have available for the Department information about the content and participation of Section 504 meetings, information about when it responded to a guardian's request for an assessment, and information about how and when it responded to complaints of discrimination such as allegations that a Section 504 plan was not implemented.

### **Determination**

*2018-2019 School Year (the Student's XXX grade year)*

Pertinent to the 2018-2019 school year, OCR investigated two issues:

1. Whether the District failed to provide the Student with a FAPE by failing to implement the Student's Section 504 plan at the School; and
2. Whether the Student was subjected to harassment based on disability and retaliation related to complaints made to the District from January through April 2019, and the District failed to respond promptly and equitably to complaints of such harassment and retaliation.

Based on the evidence gathered to date, OCR is unable to determine whether the District failed to fully implement the Student's Section 504 plan during spring 2019, the Student's final semester of XXX grade, because the District's records maintained about the events surrounding that period of time were incomplete or not maintained in a manner that made them accessible to the District

or OCR. For example, the Director acknowledged that she was unable to locate all the records for that time period regarding the Student. The District maintains that teachers were provided with copies of the Student's Section 504 plan and that they implemented it, including by providing the Student additional time to complete assignments; however, the information provided by the District indicates that there was at least a lapse with respect to provision of hard copy progress reports and a possible lack of clarity as to what was agreed upon and required with regard to tutoring. The information provided by the Complainant regarding multiple of her complaints do not make clear to OCR which are related to the Student's disability or to any other protected category within OCR's jurisdiction. Nonetheless, the parties do not dispute that the Complainant made multiple complaints to the District regarding implementation of the Student's Section 504 plan during spring 2019, and while the District reported to OCR that staff met with the Complainant multiple times, including during a Section 504 meeting on or about February XX, 2019 that OCR infers occurred (due to reference of it in the UCP complaint and notification letter of the UCP complaint's receipt), the District provided no documentation of any of these meetings from which OCR could conclude whether these meetings addressed the concerns raised by the Complainant regarding the Section 504 plan's implementation. For these reasons, OCR identified compliance concerns that the District did not comply with its record-keeping obligations pursuant to the Section 504 regulations, and that the District may not have completely implemented the Student's Section 504 plan during that time period or appropriately responded to complaints raised by the Complainant.

*2019-2020 School Year (XXX grade)*

Issue 3: Whether the District denied the Student a FAPE by failing to implement her Section 504 plan at the High School during fall 2019.

The information reviewed to date by OCR shows that the High School did not receive the Student's Section 504 plan until October 2019, three months after school started, at which time the Student was found eligible for an IEP. The District admits that the Section 504 plan was not implemented during pendency of the IEP's development. This raises a concern for OCR that the Student was denied a FAPE, though to what extent is not clear. To reach a finding on this issue, OCR would need to interview the Student's teachers to determine whether any alternative measures were provided to the Student in the absence of receipt of her Section 504 plan and the extent to which the Student was denied a FAPE.

Issue 4: Whether the District denied the Student a FAPE by failing to timely evaluate her for special education and related services during spring semester of the 2018-2019 school year.

With respect to the alleged failure to timely evaluate the Student for special education, the information shows that the Complainant requested an evaluation in January 2019. The District states that it denied that request through a PWN sometime at the end of March 2019, approximately two months after the request was made, and the District was not able to provide OCR with a copy



of that PWN upon request. At the Section 504 meeting of April XX, 2019, the District agreed to provide the Student an evaluation, but has not provided OCR with the assessment plan so that OCR can determine whether the District met standards of reasonableness in its timelines with respect to its offer and assessment. Similarly, the District told OCR that it received consent to assess on May X, 2019, but did not provide OCR with supporting documentation.

The last day of instruction for the 2018-2019 school year was May XX, 2019, twenty-three (23) days from the date consent was received by the District. The assessment was conducted in June 2019, during the District's summer vacation, during which time, time would be tolled for reasonableness considerations. The first day of instruction for the 2019-2020 school year was August X, 2019, and a meeting to determine eligibility was not convened until October X, 2019, sixty-three (63) days from the first day of the school year. Even accounting for the summer break, eighty-nine (89) days passed from receipt of the consent for assessment on May X, 2019, to the eligibility determination meeting, on October X, 2019.

While OCR does not enforce the assessment timelines established within the IDEA, which would require that an assessment be completed and an IEP meeting to review and determine eligibility held within sixty (60) days of receipt of parental consent to assess, OCR can look to such timelines as a measure of reasonableness. Here, nearly ninety (90) days from receipt of consent to the IEP meeting raises a concern for OCR that this delay was unreasonable. Another twenty-six (26) days passed before an offer of FAPE was made to the Student, on October XX, 2019, during which time, the Student did not receive any services either under Section 504 or the IDEA. This raises a compliance concern for OCR that the District did not timely evaluate the Student for special education eligibility despite reason to suspect the Student may have a disability requiring special education and related services, resulting in a denial of FAPE. To reach a finding on this issue, OCR would need to review additional documentation from the District and interview District administrators and/or special education staff to determine the precise timing of each stage of the assessment process and the extent to which the Student was impacted as a result of any resultant denial of FAPE.

### **Conclusion**

Before OCR completed its investigation, the District requested to enter into a resolution agreement pursuant to section 302 of OCR's *Case Processing Manual*, which permits for allegations to be resolved at any time prior to OCR's completion of an investigation if a recipient expresses interest in resolving the issues raised in the allegations and OCR determines that such a resolution would be appropriate because the issues can be resolved through a resolution agreement.<sup>2</sup>

To resolve the compliance concerns identified by OCR, the District has agreed to take the following steps: convene an IEP meeting to determine whether the Student is entitled to

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<sup>2</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf> (June 25, 2020).

compensatory education or services as a result of any denial of FAPE during spring and/or fall of 2019 due to a failure to implement the Student's Section 504 plan or any unreasonable delay in evaluation of the Student under the IDEA; training for District and School/High School site staff relating to the District's obligation to provide a FAPE, including procedures for ensuring sharing of relevant student records between school sites, and the District's obligation to respond to complaints of disability discrimination, including harassment and retaliation under Section 504; and development of a protocol for record keeping.

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 the investigation of 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.

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, 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.

OCR would like to thank the District for its assistance in resolving this matter. If you have any questions regarding this letter, please contact Maria Asturias, civil rights attorney, at [maria.asturias@ed.gov](mailto:maria.asturias@ed.gov) or (415) 486-XXXX.

Sincerely,

/s/

Anamaria Loya  
Chief Regional Attorney

cc: Matt Tamel, Counsel for the District  
Dee Alimbini, Executive Director of Constituent Services