



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

February 21, 2020

SENT VIA ELECTRONIC MAIL

Dr. David J. Vierra
Superintendent
Antelope Valley Union High School District
44811 North Sierra Hwy
Lancaster, California 93534

(In reply, please refer to case no. 09-19-1592.)

Dear Superintendent Vierra:

This letter is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Antelope Valley Union High School District (District). The Complainant alleged that the District discriminated against the Student based on disability.¹ Specifically, the Complainant alleged that the District denied the Student a free appropriate public education (FAPE) by failing to implement her Section 504 Plan during the 2018-19 and 2019-20 school years.

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 gathered evidence by reviewing documents provided by the District and the Complainant. OCR also interviewed the Complainant, Student, Vice Principal and the Section 504 Coordinator. Based on the facts to date, OCR identified a concern that the Student's Section 504 Plan dated May X, 2019 was not implemented with respect to extra time on assignments and tests. During the investigation, the District informed OCR that it would like to resolve OCR's concern through a Resolution Agreement pursuant to section 302 of OCR's Case Processing Manual (CPM). The applicable legal standards, factual findings to date, and resolution of this matter are summarized below.

¹ OCR notified the District of the Complainant and Student's identities when the investigation began. We are withholding their names from this letter to protect their privacy.

Legal Standard

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.

Background

The Student enrolled at a District high school at the start of the 2017-18 school year for the XX grade. Prior to enrollment, the Complainant notified the District that the Student was diagnosed with XXX XXXXX and had a Section 504 Plan in XXXX school dated November XX, 2015.

In a letter dated October XX, 2017, the Section 504 Coordinator asked the Complainant to contact the District so that a meeting could be scheduled to update the Student's Section 504 Plan for XXXX school. The letter also stated that the District would like to assess the Student for special education based on a Neuropsychological Report the Complainant provided to the District dated August X, 2017. The Complainant declined the Section 504 meeting and the special education assessment. As a result, the District continued to implement the Student's Section 504 Plan dated November XX, 2015.

Facts to Date

For the 2018-19 school year, the Student's operative Section 504 Plan continued to be the Plan dated November XX, 2015. The accommodations listed in that plan were: extra set of books; extra time to copy notes; extra time to complete assignments (up to 2 weeks); extra time to complete work for absences (up to 2 weeks); allow time to stretch before any activity and lay head down as needed; and Student will be exempt from certain activities as determined by the PE teacher in accordance with the Student's medical plan.

On April XX, 2019, the District mailed the Complainant a notice inviting her to a Section 504 meeting that was scheduled for May X, 2019. Although the Complainant did not attend, the District proceeded to hold the Section 504 meeting and develop a Section 504 Plan for the Student. The Plan states the Student will receive extra time to complete assignments and tests, extra time to take and copy notes, extra set of books, and that she will be given time to move around to stretch and take breaks. The persons responsible for the accommodations are "Teacher and Student" and the frequency of the accommodations is on an "as needed" basis.

On May X, 2019, the District mailed a copy of the Section 504 Plan and the procedural safeguards to the Complainant.

The Complainant acknowledged receiving the Section 504 Plan and the procedural safeguards, but not the notice for the meeting. The Complainant did not consent to the Section 504 Plans, however, she alleged to OCR that the teachers failed to implement the accommodations described in the May X, 2019 Plan, as well as the Student's prior Section 504 Plan, dated November XX, 2015.

The Student did not allege that her Section 504 Plan, dated November XX, 2015, was not implemented. As for the Section 504 Plan, dated May X, 2019, the Student stated that she was unclear as to when she could utilize her accommodations because the Plans states that she is receive them on an "as needed" basis. Although the Student acknowledged that her teachers generally gave her extra time to complete her assignments, she told OCR that she did not get extra time on group assignments and other assignments for which she wanted extra time. The Student also stated that she did not receive extra time on her XXXXXXXX X final. As for her other accommodations, the Student did not raise a concern that those accommodations were not provided to her.

The District provided OCR with a copy of the teachers' grade books, which listed the Student's scores on each assignment, test, and quiz. In the grade books, all but one teacher hand wrote "exempted" for some of the Student's assignments. According to the District, the teachers "exempted" some of the Student's assignments so that she did not have to turn it when she was not feeling well. One teacher hand wrote in his grade book that the Student received time and a half to complete all her assignments. The grade books for the other teacher did not include any other documentation of the Student receiving extra time on other assignments or tests.

At the start of the 2019-2020 school year, the District distributed the Student's May X, 2019 Section 504 Plan to her XX grade teachers. The Complainant alleged that all the Student's XX grade teachers did not implement any of the accommodations in the Section 504 Plan.

The Student told OCR that her teachers generally gave her extra time on assignments but that she continued to have the same problems as in the prior school year because the Section 504 Plan states that she is to receive her accommodations on an "as needed" basis. The Student also confirmed that she was given a second set of textbooks to take home at the start of the school.

On November X, 2019, the District sent the Complainant a copy of a draft Section 504 Plan with updated accommodations. The Plan states that the Student will receive: extra time to complete class and homework assignments; extra time to take tests in the resource room; reduced homework and class assignments; modify or reduce writing demands; break down information into smaller amounts; provide complex information in written form; access to class notes; teachers will check in with the Student; District will provide technology to the Student to assist in completing writing assignments; preferential seating; "hot pass" to go to the health office; extra set of books; and excuse absences, tardies or missed class due to health condition.

On November X, 2019, the Complainant signed the Section 504 Plan, consenting to it. The Complainant told OCR that she signed the Plan because it no longer stated that the accommodations would be provided on an “as needed” basis and because the District agreed to make other revisions to the Plan that she requested.

The Student told OCR that the District is providing her with the accommodations listed in her current Section 504 Plan, except that she is not receiving extra time on short-times tests called XXXXXXXXXXX XXXXXXXXX and XXXXXXXXXXX Quiz and on “pop quizzes.” She also stated that she is unclear if her current Section 504 Plan is supposed to allow her extra time on these tests and asked OCR to clarify this with the District. The Student further stated that she does not want to retake any past tests or re-do any assignments, for which she did not receive extra time. According to the Student, she experiences fatigue and body pain and it would be too difficult for her to keep up with her current classes, while re-doing past assignments and tests.

The District clarified for OCR that the Student is to receive extended time on the XXXXXXXXXXX XXXXXXXXX and XXXXXXXXXXX Quizzes, which are categorized as “tests,” but not “pop quizzes.” The District also told OCR that the Student’s teachers continued to “exempt” some of her assignments so that she did not need to turn them in when she was not feeling well due to her disability. The Student confirmed to OCR that her teachers had exempted some of her assignments.

The Complainant alleged to OCR that the District failed to implement the provision in the Student’s current Section 504 Plan, which states “excuse absences, tardies or missed class due to health condition.” The Complainant told OCR that she sent a letter to the school requesting that the Student’s absences and tardies for the month of November be excused because she was not feeling well due to her disability. According to the Complainant, the District did not excuse the absences and tardies and instead sent her a truancy letter on December XX, 2019.

The District acknowledged that the Complainant submitted a note asking the school to excuse the Student’s absences and tardies for November, but that the school did not excuse the absences because the Complainant did not state why the Student was absent or tardy in her letter. The District stated that parents and guardians are required to notify the school as to reason why their child was absent or tardy in order to have it excused.² If the Complainant stated in her note that the Student was absent or tardy due to her health, the District would have excused those dates. The District also confirmed to OCR that it had excused the Student’s absences and tardies that were listed in the truancy letter, but that in the future, the Complainant would need to notify the school if the absence or tardy were health related, in order for it to be excused pursuant to the Student’s Section 504 Plan.

Resolution Agreement Reached During Investigation

OCR identified a concern that the Student’s Section 504 Plan, dated May X, 2019, was not implemented with respect to extra time on assignments and tests. The Student’s Section 504 Plan is drafted so that the accommodations are to be provided on an “as needed” basis, without

²The Annual Parent Notification states that “following an absence, a student is required to bring a written excuse from home when returning to school. Absences without a written excuse are recorded as unexcused.”

any criteria as to how it would be decided if the accommodation was needed and what happens if the Student requests the accommodations but the teacher disagrees. Without a clear interpretation as to how the Student could utilize her accommodations, OCR is concerned that there were instances in which the Student may not have received extra time on assignments or tests when she needed it. The Student told OCR that she did not receive extra time on her XXXXXXX final during the XX grade, and other “short-timed” tests this school year. The Student also stated that she did not get extra time on some assignments in the XX and XX grades.

Prior to completing this investigation, the District informed OCR that it was interested in addressing OCR’s concerns. OCR’s CPM at section 302 states that “[a]legations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement.”³ In this case, OCR determined that the steps the District agreed to take in the attached Resolution Agreement will resolve the allegation under investigation. Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with its terms. Upon completion of the obligations under the Resolution Agreement, OCR will close the case.

Conclusion

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

³ OCR’s CPM can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

OCR thanks Matt Case for his assistance during the resolution of this complaint. If you have any questions about the letter, please feel free to contact the case resolution team.

Sincerely,

/s/

James Wood
Team Leader

cc: Matt Case
Director Behavior Intervention
Section 504 Coordinator