



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

May 17, 2021

SENT VIA ELECTRONIC MAIL

Mr. Jorge Aguilar
Superintendent
Sacramento City Unified School District
5735 47th Avenue
Sacramento, California 95824
superintendent@scusd.edu

(In reply, please refer to case no. 09-19-1640.)

Dear Superintendent Aguilar:

The U.S. Department of Education, Office for Civil Rights (OCR) has reached a determination in the above-referenced complaint against Sacramento City Unified School District (District). The Complainant, the Student's parent,¹ alleged discrimination on the basis of disability. Specifically, OCR investigated whether the District failed to provide the Student a free, appropriate, public education (FAPE) by failing to implement certain provisions of the Student's Individual Education Program (IEP) Plan.²

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations.

After a careful review of the information gathered in this investigation, OCR has determined that the District failed to implement the Student's IEP and is therefore out of compliance with Title II, Section 504, and their implementing regulations. As such, in accordance with Section 303(b) of OCR's Case Processing Manual (CPM),³ the District entered into a resolution agreement with OCR that will resolve the areas of non-compliance identified by OCR with respect to this Issue.

¹ OCR previously provided the District with the Complainant's and Student's identities. We are withholding their names from this letter to protect their privacy.

² Based on the information collected during the course of its investigation, OCR has revised this to more accurately reflect the Issue that OCR investigated.

³ The CPM (dated Aug. 26, 2020) can be found here: www.ed.gov/ocr/docs/ocrcpm.pdf.

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

The applicable legal standards, factual findings, and resolution of this matter 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 students without disabilities 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. Districts may implement a Section 504 plan developed in accordance with these requirements, or an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (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 districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Factual Findings

In August 2018, the Student was enrolled in a District elementary school (School) in the XXXXX grade. In March 2019, the Student was placed on an IEP. The Complainant alleges in her OCR complaint that the District failed to implement the Student's March 2019 IEP with respect to the following accommodations: preferential seating, modified assignments, occupational therapy, and pull-out services.⁴

With respect to the Student's March 2019 IEP, the District convened an IEP meeting for the Student on March X, 2019. The Student's IEP team included, but was not limited to, the Principal, Resource Specialist Program (RSP) Teacher (RSP Teacher), an Educationally Related Mental Health Services Social Worker (ERMHS Social Worker), and the Student's parents (Parents). The Student's Teacher (Teacher) was excused from attending the IEP meeting. During the meeting, the IEP team reviewed the Student's then-operative Section 504 Plan and academic record and determined that the Student qualified for special education services. The District's offer of FAPE for the Student included a general education classroom setting with RSP support and ERMHS counseling.

Specifically, the IEP detailed that the Student would receive reduced/shortened assignments, extended time to complete assignments (the duration of this extended time was not specified), assignments broken into smaller parts, and preferential seating (the specific seating location was not specified). The IEP included specialized academic instruction (SAI) through RSP in the area of Mathematic Problem Solving as push-in/pull-out sessions for 30 minutes, three times a week,

⁴ The Complainant alleged to OCR that the District failed to implement both the Student's September 2018 Section 504 Plan and his March 2019 IEP by failing to provide the Student with preferential seating, modified assignments, occupational therapy, and pull-out services. Per OCR's CPM Section 108(e), OCR will only investigate allegations that have been timely filed within 180 days of the alleged discrimination. The Student's Section 504 plan was not operative within the 180-day period prior to the filing of this OCR complaint. As such, OCR's investigation focused on the District's implementation of the Student's IEP that was in effect during this 180-day period.

in the regular classroom and group setting. In addition, the Student would receive ERMHS counseling and guidance in a separate classroom for 20 minutes a day, eight times a month. The IEP noted that the ERMHS Social Worker would consult with an outside provider (Counselor 1) regarding the Student's participation and progress and added that if the ERMHS counseling support was not meeting the Student's needs, additional ERMHS would be considered.

The IEP also included a Behavior Intervention Plan (BIP), which stated, in relevant part, that as a behavior support, the Student would receive deliberate seating next to the teacher/staff or next to positive peers. The Parents acknowledged that they received a copy of procedural safeguards and agreed to the IEP and attached BIP. All IEP attendees, including the Parents, signed the IEP on March X, 2019.

On May XX, 2020, the Teacher told OCR in a statement that the Student received all accommodations stated in the IEP; however, when OCR asked whether the Teacher had received a copy of the IEP, the District did not affirm.

Preferential Seating & Modified Assignments

The Complainant alleged that the Student did not receive preferential seating in the front of the classroom and did not receive modified assignments in class or as homework. According to the Parents, the Student alternated between sitting at the back and front of the classroom. The BIP stated that the Student would sit near a teacher or staff or near positive peers. The Principal informed OCR that the Student was placed in a variety of seats in order to determine which location worked best. According to the District, the Student's assignments were broken down into smaller parts, directions for assignments and exams were given in small steps as needed, the Student was given extended time to complete assignments and homework, and received modified homework as needed. The Teacher and Principal told OCR in statements that the Student was allowed to turn in assignments late and any late work was accepted for full credit.

RSP Services

The Complainant alleged that the Student was pulled out for RSP services once or twice a week, but that the focus was not on math and did not last for 30 minutes. The Complainant stated that he raised concerns about the Student's RSP services to the Principal and tried to speak to the Teacher. According to the Complainant, the Principal responded that she would look into it but did not follow up with him.

The Principal told OCR in a statement that the Student received 34 RSP sessions, which began on March XX, 2019 and continued until the last day of school, June XX, 2019. The Principal informed OCR that the Student was absent for 6 scheduled sessions. The District did not provide OCR with the requested documentation demonstrating the dates and/or duration of each RSP session and/or topics covered during each session (such as emails, an actual log, or handwritten notes).

ERMHS Counseling

According to the Complainant, the Student saw the ERMHS Social Worker only once a month and the ERMHS Social Worker did not consult with Counselor 1, as referenced in the Student's IEP, or the Student's private counselor (Counselor 2), who the Student saw from April – July XX, 2019. The Principal told OCR that at the time of IEP, the Student did not meet the criteria for ERMHS counseling, but that this counseling service would be reassessed after other support services were implemented. The District did not provide OCR with the requested documentation or correspondence from the ERMHS Social Worker to either Counselor 1 or Counselor 2 or whether other support services were readdressed. The District did not provide OCR with any information about whether this service was provided to the Student.

During the following 2019-2020 school year, the Student was enrolled in the XXXXX grade at a private school outside of the District and had an IEP in place.

Analysis

During the course of its investigation, OCR assessed whether, by a preponderance of the evidence, the District failed to provide the Student with a FAPE by failing to implement the Student's IEP provisions relating to preferential seating, modified assignments and exams, RSP services, and ERMHS counseling.

Preferential Seating & Modified Assignments

During the course of its investigation, OCR found that while the IEP stated that the Student would receive preferential seating, it did not specify the location of where the Student should sit. OCR also found, however, that the IEP included a BIP that specified that the Student would sit next to the Teacher and or staff or next to positive peers. After interviewing the Parents and reviewing the documentation collected, OCR found that the Student alternated between sitting at the front of the classroom and at the ends of seating rows and back of the classroom. OCR found that the District's rationale for seating the Student in various locations around the classroom to allow access to the Teacher and positive peers was aligned with the Student's IEP (which incorporated the BIP).

OCR also found that the District and the Parents provided conflicting statements about whether the Student's assignments and exams were modified in accordance with the IEP. OCR also did not receive evidence from either the District or Parents demonstrating that the modified assignments and exams were not provided.

As such, OCR found insufficient information to indicate that the District failed to provide the Student with the preferential seating and modified assignments accommodations.

RSP Services and ERMHS Counseling

With respect to the Student's RSP services, the Complainant asserts that the Student received RSP services once or twice a week, and that it did not focus on math or last for 30 minutes, as is specified in the Student's IEP. OCR collected information indicating that the Student received/attended 34 sessions of RSP services and missed 6 scheduled sessions due to the Student's absences. By OCR's calculations, during the time period in question, the Student should have been provided

with approximately 13 weeks of RSP services, three times a week, for a total of 39 sessions by the end of the 2018-2019 school year. OCR found that the District offered the Student an accurate number of total sessions. However, OCR also found that the District was not able to provide OCR with the requested documentation (including any emails, notes, or logs) demonstrating the dates on which each RSP session occurred, how long the sessions lasted, or the topics covered in each session. Without this documentation, the District is unable to sufficiently demonstrate to OCR that these services were provided in accordance with the Student's IEP.

With respect to the ERMHS counseling, the Complainant alleged that the Student only met with the ERMHS Social Worker once a month (not 20 minutes a day, eight times a month, per the IEP), and that the ERMHS Social Worker did not consult with Counselors 1 or 2. OCR found that while the Student's IEP explicitly states (that the ERMHS Social Worker will meet with the Student monthly and consult with the Student's counselor), the District asserted to OCR that the Student did not meet the criteria for an ERMHS Social Worker. OCR found the District's assertion to be problematic, as it directly contradicts the agreed-upon accommodation in the Student's IEP. Further, the District did not provide OCR with the information requested to demonstrate its implementation of this IEP provision (including details pertaining to when, and for how long, the ERMHS Social Worker met with the Student and consulted with Counselors 1 or 2, or if other ERMHS were readdressed). Based on the District's assertion that the Student did not need this service coupled with its inability to demonstrate its implementation of this IEP provision, OCR found that the District did not sufficiently demonstrate that it implemented the Student's provision relating to ERMHS counseling.

Therefore, in assessing the totality of the circumstances, including the District's inability to provide sufficient evidence indicating that the Student received RSP services and ERMHS counseling in accordance with the IEP and that all necessary personnel (including the Teacher) received a copy of the Student's IEP, OCR finds by a preponderance of the evidence that the District failed to provide the Student with a FAPE by failing to implement the Student's IEP, in violation of Section 504 and Title II.

To address the areas of non-compliance in its IEP implementation, District has entered into the enclosed Resolution Agreement on May 14, 2021 in accordance with CPM Section 303(b). The Agreement includes, but is not limited to, the following provisions: it requires the District to (a) convene a meeting in order to determine whether the Student needs compensatory and/or remedial services as a result of the District's failure to provide appropriate regular and/or special education or related services during the 2018 – 2019 school year; and, (b) provide a written guidance memorandum and training to all School administrators and certificated staff who oversee the Section 504 and IEP processes at the School, including individuals involved in IEP implementation.

Conclusion

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

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.

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.

If you have any questions about this letter, please contact Civil Rights Attorney Nezhia Burkes at (415) 486-XXXX or at Nezhia.Burkes@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

cc: Raoul Bozio, District's Counsel (via email only)
Enclosures