



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

November 5, 2021

VIA ELECTRONIC MAIL

Dr. Brian McDonald  
Superintendent  
Pasadena Unified School District

(In reply, please refer to case no. 09-20-1016)

Dear Superintendent McDonald:

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 Pasadena Unified School District (the District). The complaint alleged discrimination based on disability. OCR investigated the following issue: Whether the District denied a free, appropriate public education (FAPE) by failing to provide counseling services to students who have an individualized educational program (IEP) that requires these services.

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.

During its investigation, OCR reviewed information and documents provided by the Complainant and the District and interviewed the Complainant and District administrators.

Based on the facts gathered during its investigation, OCR determined that the District violated Section 504 and Title II and entered into a Resolution Agreement to correct these violations.

Legal Standard

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 students without disabilities are

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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 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.

### Facts

The complaint alleged that, at the time it was filed with OCR, there were at least 100 students who were not receiving counseling services, though these students had IEPs requiring these services. The Complainant stated to OCR that the lack of counseling services was raised during school psychologist staff meetings.

The District stated to OCR that many counselors quit during the school year, and the District was in the process of hiring replacements. Between June 5, 2018 and July 24, 2020, approximately 21 of 23 psychologists left the District—three were laid off and the remaining psychologist resigned. On March 3, 2020, the District provided OCR with an excel spread sheet which showed that over 275 students at 39 District schools were not provided with the number of counseling minutes they were entitled to per their IEPs.

On April 30, 2021, the District provided supplemental data regarding students with counseling services in their IEPs for the 2019-2020 and 2020-2021 school years. The District's supplemental data response sampled one third (approximately 93) of the students with IEPs for each school year. Of those sampled, for the 2019-2020 school year, almost 80% (79.57%) of the students with IEPs received partial or none of the counseling services to which they were entitled, with over 16% receiving no counseling services at all. For the 2020-2021 school year, almost 55% (54.64%) of the students with IEPs received partial or none of the counseling services to which they were entitled, with over 14% receiving no counseling services at all.

For example, Student 1 was a XX grader at a District charter school and was diagnosed with Adjustment Disorder with Disturbance Conduct. She was prone to verbal aggression and threats of harm. Student 1's February X, 2019 IEP stated she was entitled to 60 minutes of individual counseling each week from February 2019 to January 2020. She received none of the counseling services to which she was entitled.

Student 2 was a XX year old at a District adult school and diagnosed with Autistic-like behaviors and entitled to 45 minutes of individual counseling weekly but for both the 2019-2020 and 2020-2021 school years, was only provided part of the counseling services to which he was entitled.

Student 3 was a XXXXX grader at a District middle school and diagnosed with a Learning Disability. His October X, 2019 IEP stated that he was entitled to counseling and guidance services for 30 minutes weekly from November 15, 2018-November 15, 2019. He received none of these services.

Student 4 was a XXXXX grader at a District high school and diagnosed with Attention Deficit Hyperactivity Disorder. His April XX, 2019 IEP stated that he was entitled to counseling and

guidance services from April 18, 2019 to April 19, 2020 for 30 minutes weekly. He received none of these services.

A District employee informed OCR that the District did not have a systemic way to evaluate the counseling services it provided to students with counseling services in their IEPs, including implementing timeframes for inputting data into the database used to document such services, ensuring sufficient training on how to use the database and document counseling services, and ensuring sufficient staffing to meet the District's counseling demands. According to the employee, outdated data made it difficult to accurately assess the District's counseling efforts.

### Analysis

OCR reviewed relevant data provided by the District for the 2018-2019, 2019-2020 and 2020-2021 school years. For the 2019-2020 school year, almost 80% of District students with counseling provided for their IEPs did not receive the services to which they were entitled. During the 2020-2021 school year, almost 55% of District students with counseling provided for their IEPs did not receive the services to which they were entitled. OCR noted that during this time period, data-keeping and training for psychologists were inconsistent, and approximately 21 of 23 District psychologists left the District, making the provision of counseling services difficult. Based on these facts, OCR found that the District did not provide a FAPE to over half of the students who had counseling provisions in their IEPs.

After careful review of the evidence gathered during the investigation, OCR determined, with respect to the issue opened for investigation, the District violated Section 504 and Title II. On November 1, 2021, the District signed the enclosed Resolution Agreement, which, when fully implemented, is intended to address the allegation in the complaint. The Resolution Agreement commits the District to 1). review the IEPs for the 2020-2021 school year to identify students who were supposed to get counseling services, did not receive them, and determine whether it would be appropriate to provide compensatory counseling services, and provide those services, 2). review the IEPs for the 2021-2022 and 2022-2023 school years to ensure all counseling service provision are implemented and correct any discrepancies, 3). review its process for providing counseling services to special education students entitled to such services and create a plan to ensure the timely provision of counseling services, 4). provide annual training to school psychologists both on the District's obligations under Section 504 and Title II to implement student's IEPs, and on the system used to maintain data on its provision of counseling services, and 5). issue a guidance memorandum to District employees responsible for securing counseling service to remind them of the District's obligations and procedures to provide these services in full.

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.

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 a specific 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.

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

Thank you for the courtesy and cooperation you extended to OCR during this investigation. If you have any questions, please contact Civil Rights Attorney Rhonda Ngom at [rhonda.ngom@ed.gov](mailto:rhonda.ngom@ed.gov).

Sincerely,

/s/

Sara Berman  
Team Leader

/s/

Rhonda Ngom  
Civil Rights Attorney

Enclosure

Cc: District Designee Mr. Yani Aghili