



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 19, 2021

VIA ELECTRONIC MAIL ONLY

Kris Corey
Superintendent
Fairfield-Suisun Unified School District
2490 Hilborn Road
Fairfield, California 94534

(In reply, please refer to OCR Docket Number 09-20-1144.)

Dear Superintendent Corey:

The U.S. Department of Education, Office for Civil Rights (OCR), has reached a resolution of the above-referenced complaint received by OCR on December 10, 2019, against the Fairfield-Suisun Unified School District (District). The Complainant alleged that the District discriminated against the Student based on disability.¹ Specifically, OCR investigated whether the District failed to provide the Student with a free, appropriate public education (FAPE) when the District changed the Student's placement without following adequate evaluation and placement procedures.

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.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the Complainant and the District. OCR also interviewed the Complainant; the District's Director of Special Education, Assistant Director of Special Education, and Executive Director of Administrative Services and Community Engagement; and the School's Principal and their Administrative Assistant.

Based on the facts gathered to date, OCR identified compliance concerns with regard to the issue

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

opened for investigation. Prior to the completion of OCR's investigation, the District indicated an interest in voluntarily resolving the concerns identified by OCR, and OCR determined it was appropriate to do so. The legal standards, facts gathered to date, and a description of OCR's compliance concerns are summarized below.

Factual Findings

In fall 2018, the Student entered the District as a XXXXX grader at the School, which is a K-8th grade school. At that time, the Student's family lived outside of the District, and the Student and his sibling were placed at the School based on their father's place of employment.

While at the School, the Student had an IEP plan. The Student also had a healthcare plan for a physical health condition, which was referenced in his IEP. The Student's IEP included occupational therapy and adaptive physical education, which appear to have been provided in connection with the Student's physical health condition.

On November XX, 2019, there was an IEP meeting for the Student, who was then a XXXXXX grader at the School. At the meeting, the team determined that the Student was no longer eligible for disability-related supports under the IDEA and exited him from special education. The IEP team, however, discussed setting up a Section 504 plan for the Student. The Assistant Director of Special Education, who reviewed the November XX decision in connection with a different complaint, told OCR that the IEP team's assumption was that the Student might need a Section 504 plan because of his physical health condition. The assessments relied upon by the November XX IEP team included identification of academic supports from which the Student "might benefit" and recommendations that the Student receive classroom accommodations to prevent injury or undue stress on the joints and bones and modified/adaptive physical education.

During the IEP meeting, the Student's parents also gave a new home address within the District.

The Assistant Director of Special Education told OCR the Section 504 process is overseen by the School's Section 504 Coordinator (in this case, the Principal), and the timeframe for convening a Section 504 meeting after exiting a student from special education is as soon as possible.

Following the November XX IEP meeting, the District contacted the Student's parents three times to schedule a Section 504 meeting for the Student. On November XX, 2019, the Principal's Administrative Assistant called the Student's mother and obtained four possible meeting dates during the week of December X. On November XX, 2019, unrelated to the Student's Section 504 meeting, the School's Attendance Clerk contacted the Student's parents and informed them that the Student and his sibling were being transferred to new schools based on their change in address, and their last day at the School would be on November XX. On November XX, 2019, the Administrative Assistant left a voicemail message for the Student's mother regarding scheduling the Student's Section 504 meeting and requested a call back. An internal email from the Administrative Assistant to the Student's prospective Section 504 team indicates that she was going to confirm with the Student's mother that a meeting could be held on December XX. On November XX, 2019, the Student's mother e-mailed the Superintendent and other District Office administrators about the School-initiated transfer and other concerns, initiating the UCP complaint process. That same day, the Administrative Assistant called the

Student's mother regarding scheduling the Student's Section 504 meeting. She spoke with the Student's father, who asked why the School wanted to schedule a Section 504 meeting for the Student when the Student would no longer be attending the School.

There are disputes of fact as to what else was said during the November XX call between the Student's father and the Administrative Assistant. The Student's father told OCR that the Administrative Assistant responded that she would check with her boss and get back to him but did not do so, and there was no discussion of information from the Section 504 meeting transferring to the Student's new school; however, in a prior written complaint, the Student's father indicated that the Administrative Assistant informed him that the Section 504 plan would be for the Student's new school. The Administrative Assistant denied stating that she would check with her boss and directed OCR to her call notes. The notes state that she responded that the School wanted to schedule a Section 504 meeting so that the Student's new school would have the information, and when the Student's father indicated that he still did not understand why the School wanted to schedule the meeting, she stated that the Section 504 plan would be in place at the Student's new school, whether it was in the District, private school, or home school.

The Administrative Assistant's notes also state that the Student's father stated that he had emailed the Principal about the meeting, and the Administrative Assistant responded that she would let the Principal know about the email. They also state that the Administrative Assistant checked with the Principal about the email, and the Principal said she did not receive one as of 1:15 pm. The Student's father denied telling anyone he had or would send an email to the Principal about a Section 504 meeting.

The Administrative Assistant sent an internal email cancelling a December XX Section 504 meeting for the Student at 1:19 pm that day.

On November XX, 2019, the Student's RSP Teacher spoke with the Student's mother after school to finalize paperwork from the November XX IEP team meeting, and the Student's mother noted on the signature page that she did not agree with the Student being exited from special education. According to the District, the RSP Teacher asked the Student's mother if she wanted to schedule an IEP meeting, and the Student's mother stated that the School was kicking the students out.

Also, on November XX, 2019, the Student's father filed a written Uniform Complaint Procedure (UCP) complaint with the District regarding the decision to transfer the students to new schools.

The District confirmed to OCR that there was no further communication with the Student's family about scheduling a Section 504 meeting for the Student after November XX. The Administrative Assistant told OCR that she did not know why communication with the Student's parents ended then, and she did not speak with anyone at the School or District about reaching out to the Student's family again. The Principal told OCR that a Section 504 meeting was not scheduled for the Student because the School wanted to schedule the meeting sooner than the December dates provided by the Student's mother, and the Student's family did not provide such a date and/or they did not provide a date that worked. The Principal did not recall if her Administrative Assistant reported the reason why the Student's parent did not provide such date.

She confirmed that her Administrative Assistant reported that the Student's father asked why the School wanted to schedule a meeting when the Student would no longer be at the School. According to the Principal, the Administrative Assistant responded that it would be helpful because the School knew the Student for a year and would have more background knowledge of the Student. The Principal told OCR that the Student's family responded to the Administrative Assistant upset because the students had to change schools and did not feel a meeting was necessary. She also stated that there was no further communication about a Section 504 meeting after the Student's family said they did not want to have such a meeting.

Thanksgiving break took place from November XX, 2019 to December X, 2019. During this time, the District began communicating with the Student's family regarding the UCP complaint.

On December X, 2019, the Executive Director of Administrative Services and Community Engagement (E.D.) began investigating the UCP complaint and spoke with the Student's parents about school options for the Student and his sibling. The E.D. told OCR that the family wanted the Student at the School, but not if certain staff remained there, so he and the Student's parents decided to place the Student in independent study through the School for a six-week period, including two weeks of winter break, with the E.D. acting as a liaison between the family and the School while he investigated the UCP complaint. At the time, the E.D. was aware of the Student's physical health condition. The E.D. told OCR that he did not convene a Section 504 team meeting for the Student at that time because he felt that if one was needed, it would be in the purview of the School and the special education department, who he believed was handling a separate complaint filed by the Student's family.

The Student's independent study contract ran from December XX to January XX. The Student did not receive instruction the week of December X, though he later received assignments for the week. The E.D. told OCR that the Student's independent study program mostly consisted of instruction and assignments communicated between the Student and his teachers via email and Google classroom, and there also may have been phone calls. According to the Student's father, the Student's independent study program was to read, answer questions, and then turn in the Student's responses; the lesson plans were not set up for independent study, but for direct instruction, so the Student's education was not the same. The Student did not have an IEP or Section 504 plan in place at the time, and he did not receive disability-related supports from the District during this timeframe. The Student's father told OCR that he felt the Student should have received supports from his prior IEP.

The E.D. told OCR that sometime in December 2019, he learned from the Student's parents that they were opposed to moving the Student to the new school (School 2) because School 2 was a large middle school with XX XX XX XXXXX XXXXXXXX XXXXXXXX XX X XXXXXXXX XXXXXXX XXXXXXX XXXX XXXXX XXXXXXXX, and they did not feel that format was best for the Student. Specifically, the Student's parents stated that they had fears related to the Student's physical health condition; they worried about the Student being in an environment with many older and bigger students and moving class to class, which they felt that might be more challenging or not even safe for the Student. The Student's father told OCR that since the School was a K-8th grade school, it had only about XXX kids who were the Student's age or

older, and if the Student attended School 2, that school had all older students, and he was concerned students might knock the Student over.

The E.D. also told OCR that he spoke with others at the District about short-term and long-term placement options for the Student and his sibling, including an Assistant Director of Student Services, the Assistant Director of Special Education, and the Director of the District's long-term independent study program, and he did not know if anyone at that point considered holding or held a Section 504 meeting for the Student. The Assistant Director of Special Education did not recall if he learned at any point in time of concerns from the Student's family about the Student attending School 2. The District also provided OCR a December X, 2019 email showing that the E.D. discussed short-term independent study as a placement option for the Student and his sibling through School 2 and School 3 with a Director of Student Services. The email contains no mention of the Student's parents' safety concerns regarding the Student's transfer to School 2.

On December XX, 2019, the Student's family filed a complaint with the California Department of Education (CDE) regarding the assessment upon which the District relied to exit the Student from special education and a possible privacy violation.

On January XX, 2020, the District issued its investigation report regarding the UCP complaint, which resulted in the District allowing the Student and his sibling to remain at the School through February XX, 2020. Soon after, the Student's mother inquired into the possibility of the Student continuing in independent study, but through the District, instead of a specific school, and the E.D. provided information regarding an outside online school program. The E.D. told OCR that the District's long-term independent study did not have space for the Student at that time. The Student's parents also inquired into what would happen with the Student's IEP; the E.D. provided some information regarding their assessment-related concerns and then directed them to the special education department.

On January XX, 2020, the Student's mother completed a new independent study contract, extending the Student's independent study arrangement to February XX.

On January XX, 2020, the Student's father filed a response to the District's January XX decision regarding the UCP complaint.

On January XX, 2020, the Student's mother notified the District that she wanted to withdraw the Student from the District.

On January XX, 2020, the Student transferred to an online school program outside of the District.

The District confirmed to OCR that it did not hold a Section 504 team meeting for the Student after the November XX, 2019 IEP team meeting. The Student's father told OCR that he did not inquire into a Section 504 meeting for the Student because the Student was placed in independent study for one to two months while the District conducted an investigation, and then the District said it would send the Student to a much larger school with much larger kids, so the Student's parents decided to remove the Student from the District.

On April XX, 2020, the Student's new school found the Student eligible for special education, and it adopted an IEP containing some of the same academic supports included in Student's prior IEP plan, as well as new supports for the Student.

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 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. 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.

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.

Analysis

Based on the evidence gathered to date, OCR has a concern that the District may have denied the Student a FAPE when it changed the Student's placement without following adequate evaluation and placement procedures. Specifically, OCR identified three instances where the District did not convene a Section 504 meeting for the Student following a possible significant change in placement.

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.

Here, the District exited the Student from special education on November XX, 2019, giving rise to a significant change in placement. Although the Student's IEP team determined that the Student no longer required special education, the team also discussed setting up a Section 504 meeting for the Student. The District explained that there was an assumption that the Student might need a Section 504 plan because of his physical health condition. In addition, the assessments upon which the team relied recommended the continuation of several disability-related supports, including academic supports from which the Student might benefit and supports related to his physical health condition. Based on this evidence, the District suspected or had reason to suspect that the Student may have had ongoing disability-related needs.

The evidence further shows that the District's efforts to convene a Section 504 meeting for the Student were limited to the week of November XX. The District made three attempts to schedule a meeting. On the first attempt, the District obtained four possible meeting dates for the week of December X, and based on that information, internally set a tentative meeting date of December XX. On the second attempt, the District left a voicemail for the Student's parents, and on the third attempt, it spoke with the Student's father, who questioned why the School wanted to schedule a meeting when the Student would no longer attend the School. This was due to a School-initiated action based on a recent change in the Student's family's address, which the family contested. The evidence shows that the School informed the Student's father that information from the meeting would go to the Student's new school. There is a dispute of fact as to whether the Student's father told the Administrative Assistant that he had emailed the Principal about a Section 504 meeting. In any event, the evidence shows that no such email was sent or received, and the School promptly cancelled the tentatively scheduled December XX meeting. The Principal told OCR that there was no further communication about a Section 504 meeting after the Student's family said they did not want to have such a meeting; however, the Administrative Assistant's notes do not include such a statement.

The evidence also shows that on December XX, 2019, the District placed the Student in short-term independent study through the School, potentially giving rise to another significant change in placement, as the Student's independent study program, according to his father, was to read, answer questions, and then turn in the Student's responses. When the District placed the Student in independent study, it made no further attempt to convene a Section 504 meeting to determine whether the Student needed disability-related supports while he participated in the independent study program. The E.D., who decided with the Student's parents to place the Student in independent study, told OCR that he did not convene a Section 504 meeting at that time because such a meeting fell within the purview of the School and the special education department, who he believed was handling a separate complaint from the family. The Student's placement in independent study lasted from about December XX, 2019 to about January XX, 2020, excluding the winter break. The Student did not have an IEP or Section 504 plan in place at the time, and he did not receive disability-related supports from the District during this timeframe. The Student resumed receipt of some of the academic supports from his prior IEP at his new school following reassessment in April 2020, indicating that the Student may have needed the continuation of disability-related supports while enrolled in independent study.

Finally, the evidence shows that on November XX, 2019, the District decided to transfer the

Student to a different school due to a recent change in address – a decision the Student’s family contested by filing a UCP Complaint on November XX, 2019. The evidence further shows that in December 2019, the Student’s parents informed the District of safety concerns regarding the transfer to a large middle school due to the Student’s physical health condition. Thus, the District had notice that the transfer might constitute a significant change in placement for the Student, yet the District did not initiate the Section 504 process to determine whether this was the case, both upon learning of the parent’s concern and later, upon issuing a decision that the Student would need to change schools after February XX, 2020.

Given the totality of the circumstances, OCR has a concern that District may have denied the Student a FAPE by failing to conduct a Section 504 team meeting for the Student after it exited the Student from special education, despite knowledge of the Student’s physical health condition, District-provided assessments recommending the continuation of academic supports and supports related to the Student’s physical health condition, and parent concerns regarding the Student’s safety in connection with his transfer to a new school and his physical health condition, in violation of Section 504, Title II, and their implementing regulations.

Summary and Resolution

Prior to OCR concluding its investigation, and to address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the information obtained by OCR during its investigation. Per the resolution agreement, the District will issue written guidance and provide staff training regarding the District’s obligations under Section 504 and Title II, including with respect to evaluation and placement procedures. A copy of the resolution agreement is attached to this letter.

Conclusion

Based on the commitments made in the enclosed resolution 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 resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. 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 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.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Monique Raco Fuentes (monique.racofuentes@ed.gov).

Sincerely,

/s/

James Wood
Team Leader

Enclosure

cc: Dorothy Rothenbaum, the District's Director of Special Education
Jan E. Tomsy, Counsel for the District,