



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

June 26, 2020

**VIA ELECTRONIC MAIL**

Stacy McAfee  
Interim Superintendent  
Cupertino Union School District  
XXXXXXXX

(In reply, please refer to case no. 09-20-1192)

Dear Interim Superintendent McAfee:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Cupertino Union School District (District). The Complainant alleged that the District discriminated against the Student on the basis of disability.<sup>1</sup> OCR investigated whether the District's internal complaint process, which was completed on November X, 2019, was inadequate because it failed to investigate the concern raised in the complaint, specifically if the Student was subjected to different treatment on the basis of disability when she was denied the opportunity to earn extra credit points because she required extra time in testing.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, we concluded that the District did violate Section 504 and Title II with regard to the issue OCR investigated. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

**Legal Standards**

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant and Student. OCR is withholding their names from this letter to protect their privacy.

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

OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of disability by assessing whether it was prompt and equitable. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination and remedy the effects of the discrimination on the student who was discriminated against. The district must also take steps reasonably calculated 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.

Where the allegations filed with OCR have been investigated through a district's internal grievance procedures, OCR first thoroughly reviews all documentation of the district's investigation and resolution of the complaint to determine whether the district provided a resolution and remedy using legal standards that meet Section 504 and Title II and a comparable process that meets OCR's requirements. If OCR finds that that the district has met these requirements, OCR generally will not conduct its own independent investigation. If OCR finds that that the district has not met these requirements, OCR will conduct its own independent investigation or develop a remedy appropriate to address the issue of noncompliance.

### Findings of Fact

The Student attends a middle school (School) in the District. She has a disability and a Section 504 Plan, dated October X, 2018, which allows her to have additional time on assignments, tests, and quizzes. In the 2018-2019 school year, the Student was enrolled in the Teacher's X grade XXXX class.

On July X, 2019, the Complainant filed a complaint pursuant to the District's Uniform Complaint Procedure (UCP) alleging disability discrimination by the Teacher against her daughter, the Student. The Complainant alleged the Teacher violated the Student's 504 Plan by giving extra credit to students who completed their XXXX tests ten minutes early, but given the Student's Section 504 accommodation, she can and did take extra time on tests, and thus, she never received extra credit opportunities like other students. The Complainant also alleged the Teacher created a hostile environment for the entire class.

Administrative Regulation (AR) 1312.3 describes the District's UCP process. The compliance officer investigating the complaint shall collect and review all available documents and interview all available witnesses, including separate and confidential interviews of the alleged victim(s), offender(s), and witnesses. The legal standard is a preponderance of the evidence. The final written decision, to be issued within 60 calendar days of the District's receipt of the complaint, must contain the following six components: findings of fact based on evidence gathered; conclusions of law; disposition of the complaint; rationale for such disposition; corrective action,

if any; and, notice of the right to appeal to the California Department of Education (CDE) and other options including civil law remedies and OCR.

Initially, the District's Director of Instructional Leadership and Intervention (Director) was responsible for investigating the Complainant's UCP complaint. On or around August X, 2019, the Director called the Complainant about her complaint, and he followed up shortly thereafter with an email stating the Student would not be in the Teacher's XXXX class during the 2019-2020 school year and she will receive all her Section 504 accommodations. He also wrote that the School and District will address the Complainant's concerns with the Teacher.

Between August XX, 2019 and September XX, 2019, the Director and Complainant spoke four times and emailed twice about her complaint.

On September XX, 2019, the Complainant amended her UCP complaint to add an allegation of conflict of interest by the District in its investigation of her complaint.

On October X, 2019, the Associate Superintendent of Human Resources (Assistant Superintendent) emailed the Complainant that she would be investigating the complaint moving forward. The two met on October X, 2019, and on October XX, 2019, the Associate Superintendent informed the Complainant that she had interviewed staff members at the School and will need to speak to a few other people.

According to the District, the Director and Associate Superintendent spoke to the following individuals in order to investigate the Complainant's UCP complaint: School Counselor; HR Director (who was the former principal of the School); Assistant Principal; Principal; and the Teacher.

On November X, 2019, the Associate Superintendent sent the Complainant a letter summarizing her investigation of the Complainant's July X, 2019 complaint and September XX, 2019 amendment. According to the letter, the Assistant Superintendent's investigation entailed reviewing documents from the Complainant and other parties as well as interviewing witnesses. Regarding the Teacher's alleged failure to implement the Student's 504 Plan, the Assistant Superintendent found the allegation was not corroborated by the evidence gathered in the investigation. The Assistant Superintendent also found the allegations of hostile environment and conflict of interest were not substantiated by the investigation. However, the Assistant Superintendent found unprofessional behavior by the Teacher, which triggered the progressive discipline process and appropriate steps for her. The letter did not include the findings of fact based on the evidence gathered, legal standard applied, rationale for the disposition of each allegation, or notice of appeal rights.

### Analysis

Pursuant to Section 108(h) of OCR's Case Processing Manual, OCR will review a district's internal grievance process to determine whether it provided a comparable resolution process under comparable legal standards to that of OCR. For the reasons stated below, OCR's review

of the District's handling of the Complainant's internal grievance leads OCR to conclude that the District's process was not comparable to that of OCR.

Based on the letter of finding dated November X, 2019, the District's investigation of the Complainant's amended UCP complaint was not a comparable resolution process under legal standards comparable to that of OCR. The Complainant alleged different treatment by the Teacher, though she characterized it as a violation of or failure to implement the Student's Section 504 Plan. Regardless of what term the Complainant used to name this type of disability discrimination, the substance of the Complainant's allegation was the Teacher's practice of awarding extra credit to students who complete tests early resulted in different treatment for the Student because of her disability. The Student's 504 Plan provided her with extra time on tests, which she took, and yet her exercising this accommodation precluded her from the extra credit opportunities available to other students. OCR finds that under Section 504 and Title II, the District was required to respond promptly and equitably to the allegation of different treatment of the Student based on disability.

OCR analyzed whether the November X, 2019 letter demonstrated that the District responded promptly and equitably to the allegation of different treatment. According to the District's letter, the investigation did not corroborate the Complainant's allegation about the Teacher violating the Student's 504 Plan. However, the District's letter failed to provide any findings of fact or rationale to support its conclusion that the Teacher's extra credit practice did not result in different treatment of the Student based on disability. Though the letter identified investigatory techniques such as document review and interviewing witnesses, it failed to identify any facts gathered from documents or interviews. Thus, it is unclear how or why the preponderance of the evidence weighed against a finding of different treatment.

The District's UCP process, as described in AR 1312.3, is comparable to OCR's resolution process, but the District did not comply with its UCP process. Despite the requirements of AR 1312.3, the District's November X, 2019 final written decision did not include findings of fact, rationale for the disposition, or notice of appeal right to CDE, OCR, or civil law remedies.

Section 504 and Title II required the District to respond promptly and equitably to the Complainant's allegation of different treatment of the Student based on disability, but the District, as seen in its November X, 2019 letter, failed to do so. Thus, pursuant to Section 303(b) of the OCR Case Processing Manual, OCR finds that the actions taken by the District in this case were insufficient to meet the Section 504 requirements of a prompt and equitable investigation.

### Conclusion

This concludes the investigation of this complaint.

To address the issue alleged in the complaint, the District entered into the enclosed Resolution Agreement which is aligned with the complaint allegation and the findings and information obtained by OCR during its investigation. Under the Resolution Agreement, the District will issue a guidance memorandum and provide training on the Section 504 and Title II requirements for a prompt and equitable response to alleged disability discrimination and the elements of the

UCP as found in AR 1312.3. The Resolution Agreement also requires the District to complete the investigation of the Complainant's allegation of different treatment and issue her an updated final written decision.

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.

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

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 Complainant 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee, Civil Rights Attorney, at [annie.lee@ed.gov](mailto:annie.lee@ed.gov).

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure (1): Resolution Agreement