



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

August 20, 2020

Via Electronic Mail

Julie Hall-Panameño
Director
Educational Equity Compliance Office
Los Angeles Unified School District
333 S. Beaudry Avenue – 18th Floor
Los Angeles, California 90017

(In reply, please refer to OCR Case Number 09-20-1296.)

Dear Director Hall-Panameño:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint, received on March X, 2020, against Los Angeles Unified School District (District). The Complainant alleged that the District discriminated against a student (Student) on the basis of disability.¹ Specifically, OCR investigated the following issue:

1. Whether the Student was denied a free, appropriate public education (FAPE) when the following provisions of his Individualized Education Program (IEP) were not implemented:²
 - a. the Student receiving a paper copy of classroom agendas including learning target, assignment log, and homework;
 - b. modification of tests and assignments;
 - c. receipt of classroom assignments when the Student is unable to attend class due to a broken elevator in the classroom building;
 - d. assistive technology (computer and Voice Typing);
 - e. administering the Student's Behavior Intervention Implementation;
 - f. not being marked late during his 10-minute transition period between classes; and,
 - g. bus transportation being provided in an effective manner.

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

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 privacy.

² The Complainant told OCR that her concerns were related to the Student's XXXXXXXX and XXXXXXXX classes. Therefore, OCR focused its investigation on those classes.

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 District and the Complainant. OCR also interviewed the Complainant and District high school (School) staff. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issue investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

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. 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 and Legal Analysis

IEP Provisions

During the 2019-2020 school year, the Student was enrolled in XX grade at the School. He uses a wheelchair and has an IEP under the eligibility category of Orthopedic Impairment. At the start of the 2019-2020 school year, his IEP included the following:

- “Every teacher will ensure that [the Student] is provided a paper copy of classroom agenda that include learning target, assignment log, and homework”;
- Shortening of classroom assignments “while still maintaining learning target” and adjusting homework assignments “so that only one problem is addressing learning concept if possible”;
- Extended time on tests and assignments, up to time and a half, if needed;
- “[I]f elevator is broken, provide copies of classroom assignments to the student while class is in session”;
- Earlier dismissal from classes up to 10 minutes before the bell;
- Transportation services;
- A one-to-one aide for assistance with physical movements and use of his wheelchair; and,
- 200 minutes/week of Resource Specialist Program (RSP).

An IEP meeting was held on October XX, 2019, at which the Student's accommodations and services did not substantially change. A subsequent IEP meeting was held on December XX, 2019, and the following accommodations were added to the Student's IEP:

- If unable to access the classroom, "teachers will coordinate a video conference with [the Student] so that he can watch and listen into the classroom lesson in real time as needed";
- "For Writing – Access to a lightweight, touchscreen computer with word prediction and speech recognition capabilities, a headphone/microphone device[,] access to a school printer, a case that will hold all of his necessary school materials along with the computer. All equipment approved for home and school use"; and,
- "Assistance with computer set up in class and access to a quiet place for Voice Typing as necessary."

The foregoing accommodations are discussed below.

Paper Copy of Classroom Agendas

The IEP requires teachers to provide the Student with a paper copy of the agenda. Although not reflected in the IEP, both the Complainant and the Case Manager told OCR that it was agreed that the Student's aide would write down the agenda and assignments from the classroom whiteboard into the Student's notebook. The Complainant alleged that the notebook frequently did not contain an agenda or assignments, and as a result, the Student would be unaware of what the homework assignment was and would lose credit. She shared with OCR photos of notebook entries from eight days throughout the course of the school year. The notebook contained agendas for XXXXXXXX on all of those dates. For XXXXXXXX, "no agenda" was written on all but one date.

Schoolwide, teachers were supposed to post an agenda, including learning target, assignments, and homework on the board in the classroom for all students. Both the XXXXXXXX and the XXXXXXXX teachers told OCR that they posted the agenda daily, and that the Student's aide copied it down for him. The XXXXXXXX Teacher told OCR that sometimes the assignments would remain the same throughout the week, so it would not always appear as if she updated the agenda.

OCR identified a compliance concern that the Student was not provided with a paper copy of classroom agendas as required by his IEP. While the practice was to rely on the Student's aide to copy down the agendas and assignments in the Student's notebook, a review of sample entries provided by the Complainant shows that the Student did not consistently receive a documented version of the agenda and assignments.

Modification of Assignments and Extended Time on Tests and Assignments

The Complainant alleged that the XXXXXXXX and XXXXXXXX teachers did not implement the Student's accommodations regarding assignments and tests. She alleged that the teachers told the Student to do half of his assignments without otherwise modifying them in terms of content, penalized him for not completing assignments, and did not provide the Student with extended time on tests and assignments. The Complainant also shared that because the Student was allowed to leave class 10 minutes early to transition to his next class, he ended up with less time for tests than other students in the class.

Neither teacher assigned much work exclusively as homework, but rather homework was often a continuation of classwork assignments that students were allowed to complete at home. The teachers further told OCR that they provided the Student with extended time to submit his work in addition to implementing his other accommodations.

The XXXXXXXX Teacher described that for composition book assignments, she selected three pages (out of 6-10 topics) to grade for other students in the class, but for the Student, she only graded two of the pages, allowed him to select which pages, and gave him credit for as little as writing a title on the page. For benchmark assignments, she allowed him to complete his revisions to those assignments at home, allowed him to select his own book and use an audiobook for his 30-minutes of nightly reading, and her quizzes only counted for participation points (but were the basis for future assignments). OCR asked the XXXXXXXX Teacher what her process was for relaying the shortened assignments to the Student, and she said she did not spend a lot of time on it, as there were a lot of other students in the class. She told OCR that, regardless of the accommodations, the Student rarely completed his assignments and did not do his at-home reading (and would usually miss the first 20 minutes of class which involved silent reading), which resulted in poor grades for much of the school year. The XXXXXXXX Teacher recalled encouraging the Student to complete his composition book assignments, as they were easy to get an “A” on, but he did not. She also recalled on several occasions reminding him of what he needed to complete, and on other occasions printing out the assignment list and highlighting the outstanding assignments. She noted that the Student’s engagement and submission of assignments improved during virtual learning, and that his grade had improved. The Complainant told OCR that it was only when virtual learning started that the XXXXXXXX Teacher began accepting modifications that the Complainant herself made to the Student’s assignments.

The XXXXXXXX Teacher described that the Student was required to do half of the current events assignments and half the reading/summarizing sections of books assignments, with at least twice the amount of time, and she recalled reminding him at least three times throughout the school year of the accommodation. For “notes” assignments, she provided the Student with a hard copy of the notes as a PowerPoint already prepared, unlike other students without IEPs. He was allowed to continue to work on tests and quizzes in RSP (which immediately followed XXXXXXXX class), which the XXXXXXXX Teacher recalled the Student electing to do once during the Fall semester, but recalled that the Student typically finished tests and quizzes within the class period. The XXXXXXXX Teacher told OCR that she verbally told the Student how his assignments were modified and adjusted. She explained that, nevertheless, the Student infrequently did much, if any, additional work at home and often needed and used more than the allotted extended time. She told OCR that during the Spring semester, the Student turned in less and less work, and would, for example, turn in half of the already accommodated (i.e., halved) assignments.

The Complainant, on the other hand, alleged that it was only after complaining about teachers not implementing accommodations in February 2020 that the XXXXXXXX Teacher began to excuse some assignments, but still held the Student responsible for other assignments that were not accommodated. During virtual learning, on May XX, 2020, the Student emailed the Case Manager that despite turning in XXXXXXXX assignments, he was still not getting full credit. After reaching out to the XXXXXXXX Teacher, the Case Manager responded to the Student, writing that the XXXXXXXX Teacher grades for work quality in addition to completion; the Case Manager explained that the Student was not

losing points for turning his assignments in late, that the XXXXXXXX Teacher had excused assignments for him, that the Student should reach out to the XXXXXXXX Teacher with questions on how he could have improved assignments, and that the XXXXXXXX Teacher would allow the Student to revise and resubmit any assignments to try to improve his grade. The Complainant told OCR that the XXXXXXXX Teacher did not accept the adjustments and modification the Complainant made to the Student's assignments, giving the Student only partial credit.

OCR identified a compliance concern that the teachers did not appropriately implement the Student's accommodations of shortening classroom assignments "while still maintaining learning target" and adjusting homework assignments such that "only one problem is addressing learning concept". While OCR notes that the teachers frequently halved the Student's assignments and provided extended time, the Student's accommodations required more than merely halving his assignments to appropriately implement the accommodations. Furthermore, OCR is concerned that the Student was not provided extended time on tests and may have been provided less time than other students because of his early dismissal accommodation as described in more detail below regarding transition periods and bus transportation.

Copies of Assignments when the Elevator is Broken

According to the Complainant, the elevator was out of order on the following days – a few days at the beginning of the school year; October XX through November X, 2019; March X, 2020; and March XX through XX, 2020 – which impacted the Student's XXXXXXXX and XXXXXXXX classes, as they were held in second floor classrooms. The Complainant alleged that when the elevator was broken, the Student was placed in a conference room with his aide, infrequently received work and assignments which were difficult to complete without classroom instruction and was marked absent. She noted once, the Student was not administered a XXXXXXXX test and was given a failing grade.

The Complainant expressed concern about elevator outages at the October XX, 2019 IEP meeting, and on November X, 2019, emailed the Case Manager writing that while the Student was provided work, he was marked absent and did not receive instruction via video conferencing.³ The Case Manager replied that he worked with the XXXXXXXX Teacher and the XXXXXXXX Teacher to come up with a plan to ensure that the Student could video conference into the second floor classrooms in case of elevator incidents beginning the Spring 2020 semester, in addition to providing the Student with copies of notes and assignments. Despite the inclusion of this accommodation into the Student's IEP at the December XX, 2019 meeting, video conferencing was never used in the Spring semester, and neither the XXXXXXXX Teacher nor the XXXXXXXX Teacher recalled discussions of it or were aware that it was an option.

The XXXXXXXX Teacher told OCR that when the elevator was broken in October and November 2019, it took her a couple of days to find out why the Student was absent from her class, but once she learned that it was due to the elevator, she held class outside. She said that when the elevator was subsequently down, she sent the Student's group (a group of students the Student worked with in class) down to the first floor conference room to work with the Student and relay information from

³ OCR notes that video conferencing of instruction had yet to be included in the Student's IEP.

the class. She did not recall any assignments due on the days the elevator was broken and acknowledged there was no process in place to get the Student the agenda on those days.

The XXXXXXXX Teacher told OCR that when the elevator was down, she called the office to request someone or sent another aide in her classroom to bring assignments to the Student and pick up his work. She recalled the Student's aide coming to the classroom on one occasion to get the notes. She also noted that the assignments were typically the same as the day prior, so the Student should have known what the assignment was. She did not recall if the elevator was down on a day she administered a test.

OCR identified a compliance concern that the Student's teachers failed to consistently provide the Student with copies of classroom assignments when the elevator was broken in the Fall semester as evidenced by the delay in the XXXXXXXX Teacher becoming aware that the broken elevator was the reason the Student missed her class. Furthermore, OCR is concerned that the teachers did not implement the video conferencing accommodation in the Spring semester after it was added to the Student's IEP, and appeared unaware of the accommodation or that such technology existed at the School.

Assistive Technology

The Complainant alleged that the Student never received the assistive technology specified in the December XX, 2019 IEP, including a computer with voice typing capabilities. According to the District, the Student's assistive technology was delivered to the School on June XX, 2020, and on June XX, 2020, a School administrator left a message for the Complainant that the assistive technology was available to be picked up.

The Complainant also alleged that the Student was not instructed on how to use voice typing on classroom computers. The Case Manager told OCR that the Student never opted to use voice typing in his RSP class. The XXXXXXXX Teacher recalled asking the Student if he preferred typing to writing and telling him that he could speak into his phone to record answers (which could be turned into text), but that he never used this option and never mentioned voice typing to her. The XXXXXXXX Teacher told OCR that computers were rarely used in her class, but that the Student could have used them if he needed to.

OCR identified a compliance concern that the assistive technology agreed upon at the December 2019 IEP meeting was not made available to the Student until nearly six-months later, resulting in a full semester when the Student did not have access to it.

Behavior Intervention Implementation (i.e., One-to-One Aide)⁴

The Complainant provided OCR with letters from the District, dated October 2019 and February 2020, that reflect that zero percent of the Student's Behavior Intervention Implementation (BII) had been provided to him thus far and that the School would work to make up the service minutes owed. She did not otherwise raise any allegation related to implementation of the BII. During the

⁴ His aide is frequently referred to as a BII (Behavior Intervention Implementation).

investigation, OCR asked what the Complainant's concern was, and despite saying that she would get back to OCR and OCR following up via email, she did not respond to this inquiry.

The Case Manager recalled that the October 2019 and February 2020 letters were likely a result of the aide not recording his or her hours correctly, resulting in the letters being mistakenly generated.

Based on the Complainant's lack of response to OCR regarding this matter and the Case Manager's explanation that the two letters were likely mistakenly generated, OCR infers that this matter has been resolved and is dismissing this portion of the allegation under Case Processing Manual § 108(j), which says OCR will dismiss a matter if OCR obtains credible information indicating that the matter raised by the complainant is currently resolved, and is therefore no longer appropriate for investigation.⁵

Transition Periods, Bus Transportation, and Missed Instructional Time

The Complainant alleged that the bus arrived late to the Student's home in the morning, and on three or four occasions, did not arrive at all, which resulted in him arriving to school around 15 minutes late to his XXXXXXXX class, missed instruction, missed assignments, and on occasion unexcused absences. The Complainant also alleged that the Student was marked tardy or absent from class during transition periods, if the bus was late or failed to pick the Student up, or when the elevator was down, in violation of his IEP.

The XXXXXXXX Teacher confirmed that the Student consistently arrived late to her class because of the school bus. She explained that the instructional portion of her class began at 8:15 am after school breakfast, but that the Student would not arrive until between 8:10 and 8:20 am and would then need to eat breakfast before engaging in class. She also noted that he would leave ten minutes before the end of class, per his accommodation, and therefore he had approximately 20 minutes of class time when he was able to focus on work and instruction. The XXXXXXXX Teacher told OCR it was unclear who was responsible for communicating reminders about assignments to the Student if she made the reminder after the Student had left class to transition to the next period, although she tried to notify the Case Manager, update the online portal, or leave a post-it note for the Student.

The Case Manager attributed some of the Student's difficulty in completing assignments to not spending a lot of time in class due to his need for longer transition periods (i.e., leaving class early and arriving to class late), and the need to leave the last period early to catch the school bus that accommodates his wheelchair.⁶ The Case Manager assumed that as a result, the Student realistically received 30-40 minutes of instruction in a 50 minute class. The Student's teacher for the last period shared that the Student often arrived 10 or more minutes late to class and left 10-20 minutes early to catch his bus. The Case Manager told OCR that he believed teachers did their best to catch the Student up on what he missed, but noted that missed instruction time is hard to replace.

While the Student's IEP does not include an accommodation or modification that the Student be allowed to arrive late to class nor that he not be marked tardy or absent, OCR has identified a compliance concern regarding the amount of instructional time missed due to the Student's longer

⁵ OCR's Case Processing Manual can be found here: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

⁶ The Case Manager told OCR that he tried to have the bus time changed when the Student was in X grade, but was told it could not be done.

transition period, late arrival to school as a result of bus delays, and need to leave his last period class early for his bus at the end of the school day. According to staff accounts, the Student often missed between 10 and 30 minutes of instruction time per class.

Summary and Resolution

In summary, OCR has compliance concerns with respect to: the implementation of the Student's agenda, and classroom and homework assignment, and testing accommodations; the provision of instruction to the Student during elevator outages; the District's nearly six-month delay in providing the Student with assistive technology; and, the amount of class time missed due to the bus delivering the Student to school late, the end-of-the-day bus picking him up early, and the amount of transition time the Student required between classes.

Prior to concluding its investigation and to address the issue 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 allegation and the information obtained by OCR during its investigation.

Under the resolution agreement, the District will: convene an IEP team to determine whether the Student is owed any compensatory and/or remedial services, develop a plan for elevator outages, and discuss missed instructional time due to early dismissal accommodations and bus delays; introduce and train the Student on his assistive technology; develop guidance documents on the provision of FAPE to students during elevator outages and as a result of bus delays/bus scheduling; and, convene a meeting of the Student's 2020-2021 teachers to discuss implementation of the Student's IEP accommodations and modifications.

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 allegation. 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.

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. 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 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 the law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Shana Heller, Attorney, at (415) 486-XXXX or at Shana.Heller@ed.gov.

Sincerely,

/s/

Kana Yang
Team Leader

Enclosure

cc: Alva Posada
Specialist, Educational Equity Compliance Office