



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 27, 2023

Lamont A. Jackson
Superintendent
4100 Normal Street
San Diego, CA 92103

By email only to: ljackson@sandi.net

Re: **San Diego Unified School District**
OCR Case No. 09-20-1311

Dear Superintendent Jackson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the District. The complaint alleged that the District discriminated against the Students on the basis of race and disability.¹ Specifically, OCR investigated the following issues:

1. Student 1 was denied a FAPE when the District:
 - a. Failed to implement his Section 504 plan. Specifically, the complaint alleges that Student 1 was denied accommodations, which included the ability to leave the classroom to go to the bathroom and the provision of extra time to turn in assignments.
 - b. Failed to make placement decisions with a group of persons knowledgeable about Student 1, the evaluation data, and the placement options.
2. Student 2 was denied a FAPE when the District:
 - a. Failed to implement her Individual School Health Plan, including a provision regarding parent accompaniment on field trips; and
 - b. Failed to evaluate and develop an appropriate placement for her, including failure to provide the Parent with Section 504 procedural safeguards when the Section 504 team disagreed over placement.
3. Student 1 was subjected to different treatment based on race by Teacher 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

¹ OCR previously provided the District with the identities of the students. We are 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.

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. OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance. The District is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, Title VI and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Students' Parent and the District. After careful review of the evidence gathered in the investigation, OCR concluded that the District violated Section 504 and Title II and their implementing regulations with regard to Issues 1 and 2(b). OCR also concluded that the District did not violate Section 504 and Title II and their implementing regulations with regard to Issue 2(a) and did not violate Title VI and its implementing regulations as to Issue 3.

The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

Issues 1 and 2

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. 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 § 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.

Additionally, Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Issue 1 Factual Findings

The following facts are relevant to OCR's analysis:

During the 2019-2020 school year, Student 1 was a X grade student at the School. Student 1 had a Section 504 Plan, dated October X, 2018, which provided him with accommodations during the 2019-2020 school year. His accommodations included: when Student 1 is absent or tardy due to medical appointments or treatments related to his diagnosis, he will be provided additional time that is equal to the time missed in order to complete missed assignments and tests; Student 1 will have additional time to complete classroom assignments equal to the class time he missed when he needs to use the restroom; Student 1 would be given equal time to complete classroom tests equal to the time he missed (this time is to be given without penalty and may occur in another classroom as needed); teachers will provide Student 1 with critical academic information and lecture notes when class time is missed due to his diagnosis; teachers are to input academic grades and assignments into Power School on a weekly basis so that parents are able to monitor academic progress; and, all staff are required to follow Student 1's Individual School Health Plan (ISHP).

Student 1's ISHP, dated October X, 2018, provided accommodations, including bathroom privileges on request immediately without delay and student/teacher cueing of raised hand X---redacted content---X to indicate the need to use the restroom. According to the Counselor, Student 1's October X, 2018, Section 504 Plan was in effect until his Section 504 Plan was updated on March XX, 2020, with the same accommodations described above.

Updating Student 1's Section 504 Plan

As part of the District's yearly review of Student 1's 2019-2020 Section 504 Plan, the Counselor attempted to schedule a Section 504 meeting. Despite her attempts to organize such a meeting earlier in the school year, she stated she was unable to do so due to the slow responses of the Students' parent (Parent) to her scheduling requests. In December 2019 the Counselor solicited input from teachers regarding Student 1's accommodations and continued trying to schedule a meeting. It was around this time, on December XX, 2019, that the Parent withdrew Student 2 from school. Working towards the goal of supporting Student 2's return, District administrators organized Student 2's first re-entry meeting on January XX, 2020. The failure of this meeting resulted in the February X, 2020, meeting, which had the stated purpose of addressing both students but primarily discussed Student 2.

The District relied on the February X, 2020, meeting to serve multiple purposes. It was the meeting leading to Student 1's updated March XX, 2020, Section 504 Plan. It was both Student 2's second re-entry meeting and Section 504 Plan eligibility meeting. According to the Principal, it also served as a time to hear the Parent's overall concerns regarding both students.

In updating Student 1's Section 504 Plan, the District did not follow its usual process as described by multiple District staff, including the Counselor. OCR relied on audio from the meeting to determine that those present during the February X, 2020, meeting included: the Principal, a retired school principal, a quality assurance support specialist, a public information officer, and the Counselor. During OCR's interview, the Counselor stated that no teachers were present at the February X, 2020, meeting; and she did not provide OCR with any facts demonstrating that she had weighed the feedback from teachers and incorporated it in the Section 504 team's decision-making process. The Counselor did not finalize the students' Section 504 Plans and did not send them to the Parent until more than 30 days following the meeting date. She told OCR that her usual turn-around time was about two days. Furthermore, the Counselor did not disseminate copies of the plans to the teachers until nearly the end of the school year, on June X, 2020.

As to the implementation of Student 1's Section 504 plan in the classroom during the 2019-20 school year, the Parent alleged that Student 1's XXXXXX teacher (Teacher 1) and his XXXXXX teacher (Teacher 2) were not implementing his Section 504 accommodations when they denied Student 1's ability to leave the classroom to go to the bathroom, when they failed to provide Student 1 with additional time to complete classroom assignments equal to the class time he missed to bathroom use, when they failed to provide critical academic information and lecture notes to Student 1 when he missed class time due to his disability, and when they failed to provide Student 1 with additional time to turn in assignments equal to the time he missed for being tardy or absent due to medical appointments or treatments related to his diagnosis.

Teacher 1

The Parent told OCR that the Teacher 1 allegedly: failed to keep the Parent informed of Student 1's academic progress; prevented bathroom breaks for Student 1; and did not provide Student 1 with equal time to complete assignments when he was absent due to his disability or had to use the bathroom due to his disability.

According to Teacher 1, she updated XXXXXX grades in Power School every week or even more frequently, and she would often send home automated messages when a student missed an assignment.

Teacher 1 also told OCR that Student 1 was allowed to use the bathroom as needed during her class, and she did not require him to use or tell him to use the bathroom during lunch or passing period. Teacher 1 told OCR she did not prohibit Student 1 from using the bathroom or ever tell him "now is not a good time." Instead, she allowed Student 1 to use the bathroom when he asked to, and each of those instances lasted only for a minute or two. OCR reviewed some of Teacher 1's bathroom log from the 2019-2020 school year and found Student 1 used the bathroom four times between November XX, 2019, and March X, 2020. OCR also reviewed a December X,

2019, email from Teacher 1 to the Counselor, and Teacher 1 wrote that Student 1 did not often go to the bathroom during her class.

Teacher 1 denied that she failed to provide Student 1 with equal time to complete assignments when he was absent due to his disability or had to use the bathroom due to his disability. Regarding make-up time for having used the bathroom, Teacher 1 stated she gave Student 1 equal or more time on assignments. For instance, she allowed him to finish assignments another day or at home. She also stated that during the few times Student 1 used the restroom during class, he missed independent work time, not lecture, so there was no critical academic information to provide him.

Regarding make-up time for being absent, Teacher 1 told OCR that she did not know when Student 1 was absent due to his disability because she is not typically made aware of why students are absent. She recalled Student 1 being absent for about a week or five days, and when he returned, she spoke to him in the corner of the classroom away from other students to ask why he was out. After Student 1 explained his stomach hurt, Teacher 1 gave him until the end of the following week to complete the XXX Project, which Student 1 missed during the week of his absence (other students had all week—five days—to complete the assignment). According to Teacher 1, Student 1 turned in the assignment three days later, before his equal time ran out.

OCR reviewed two emails from Teacher 1, dated June X, 2020, after she received Student 1's March XX, 2020, Section 504 Plan. Teacher 1 emailed the Interim Principal with her objections to Student 1's Section 504 Plan and indicating aspects of it that were not possible to implement. Specifically, she stated that it was "not possible" to implement the accommodation of providing Student 1 additional time equal to time he missed because in January 2020, he missed nearly two weeks prior to the end of the semester, and she could not give him the make-up time due to the grading periods. Teacher 1 also stated it was not possible to implement the accommodation of providing him critical academic information or lectures notes for instruction he missed because there is no time to do so, and that when she has offered her lunch time to do so, which is supposed to be duty free for her, Student 1 has not taken advantage of it more than twice in two years. The Interim Principal replied to Teacher 1's email stating that Student 1's Section 504 Plan was written with the previous principal and members of the Section 504 team.

Teacher 2

The Parent told OCR that Teacher 2 allegedly: prevented bathroom breaks for Student 1; did not provide critical academic information and lecture notes when he missed class time due to his diagnosis; and did not provide him with equal time to complete assignments when he was absent due to his disability or had to use the restroom due to his disability.

OCR interviewed Teacher 2 regarding the allegations of failure to implement Student 1's Section 504 Plan. Teacher 2 told OCR that she allowed Student 1 to use the bathroom whenever he cued his need by raising his hands X---redacted content---X. She also reported that he did not use the bathroom very often, and if he did, he was gone for a very short period of time. If he used the bathroom during a test, he received the time he missed.

Teacher 2 also told OCR that she provided Student 1 with the information he missed if he did use

the bathroom during class. She emphasized that Student 1 rarely used the bathroom during class, and if he did, she would provide him with a print-out copy of all the information he missed. More often, however, Student 1 used the bathroom as the students were X---redacted content---X, and she could not recall a time when Student 1 needed the print-out copy of information. If Student 1 missed independent work time due to bathroom use, then he could get the time back by completing the work during Teacher 2's advisory period. Additionally, Teacher 2 stated that she gave up her lunch to help him catch up if he ever missed something important from class, and he responded well to the extra tutoring and time for assignments.

The Parent alleged that Teacher 2's policy to reject all late work meant Student 1 was not allowed equal time to complete assignments he missed when he was absent for reasons related to his disability. Teacher 2 told OCR that Student 1 was allowed to submit his work late due to his disability, and she provided him with unlimited extra time. For instance, she allowed Student 1 to complete assignments at home rather than in class, and she would also meet with him at lunch to help him complete his work. The online platform for students to submit work required a deadline, but students could submit late work by re-opening the assignment or attaching files to comments and emailing Teacher 2 to let her know the work is attached.

OCR reviewed a December XX, 2019, email from Teacher 2 to the Counselor regarding Student 1's Section 504 accommodations. She wrote that it is "sometimes impossible" to implement the accommodation that she provide academic information and lecture notes for class time missed by Student 1 due to his disability because given the many students she has, she is not able to track who is absent. She further wrote that Student 1 should be the one who is responsible for asking for what he missed and obtaining notes from a friend, and that he can be given extra time at home to complete his notes. According to the Counselor, she did not respond to Teacher 2's email because she typically does not reply to teachers' comments about Section 504 accommodations though she takes what teachers say into consideration when she writes the Section 504 team's accommodations for a student.

Student 1 is currently not enrolled in a District school.

Issue 1 Analysis

Regarding Issue 1(a), based on review of the evidence gathered, OCR concluded that the District denied Student 1 a FAPE because Teachers 1 and 2 did not fully implement Student 1's Section 504 Plan during the 2019-2020 school year. Both teachers told OCR they implemented all his accommodations, including allowing him to use the bathroom when needed, providing him equal time for time missed due to bathroom breaks and absences related to his disability, and providing him with critical academic information he missed due to bathroom use. Contrary to these statements, however, OCR obtained documents showing that both teachers found Student 1's accommodations impossible to implement, and that in particular instances and/or circumstances, they did not provide him with all of his accommodations.

Specifically, Teacher 1 stated that providing Student 1 with additional time equal to time missed was not possible. For instance, in January 2020 the Student missed nearly two weeks of school, and Teacher 1 could not give him the make-up time due to grading periods. Also, Teacher 1 could not provide Student 1 with critical information or lecture notes for instruction he missed

because there was no time do so. Teacher 2 also failed to implement Student 1's accommodations and stated as much to OCR. Teacher 2 did not describe a practice of providing Student 1 with additional time equal to time missed, and in fact stated that she found the accommodations impossible to implement as well.

Regarding Issue 1(b), based on review of the evidence gathered, OCR concluded that Student 1's placement decision was not made by a group of persons knowledgeable about him, the evaluation data, and the placement options. OCR found written communications from both Teacher 1 and Teacher 2 that demonstrated that those teachers were knowledgeable about Student 1's placement options and had important feedback to provide to the Section 504 team about revisions to Student 1's Section 504 plan. However, the District did not provide OCR with any facts demonstrating that the Counselor had communicated this feedback to the Section 504 team including before, during, or after the meeting itself. Student 1 was hardly discussed during that meeting, and none of his teachers were present to provide their feedback directly.

Thus, OCR concluded that the District violated Section 504, Title II, and their implementing regulations with regard to Issue 1.

Issue 2 Factual Findings

During the 2019-2020 school year, Student 2 was a X grade student at the School. The Parent requested a Section 504 Plan for Student 2 on December X, 2019, because she stated Student 2 experienced XXXXXXXX and required special education accommodations at the School. The Parent pulled Student 2 from the School in December 2019 because she XXXXXXXXXXXX XXXXXXXXXXXX and the Parent was concerned about her safety. Once Student 2 was withdrawn from school, the District worked to help support the Student by organizing an Instructional Study Team (IST) meeting and two re-entry meetings.

On January XX, 2020, the IST meeting discussed Student 2's December 2019 diagnosis of XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX and the Parent's concerns regarding several incidents at School involving Student 2. The IST determined, among other next steps, that the Nurse would develop an Individual School Health Plan (ISHP) for Student 2, and the Principal or Counselor would refer Student 2 to a Section 504 team to determine Section 504 eligibility. Additionally, the Principal would initiate a classroom change per the Parent's request. After the January XX, 2020, IST meeting, the Principal emailed the Parent on January XX, 2020, to confirm that Student 2 was now enrolled in a different X grade classroom with two co-teachers, Teachers 4 and 5. The Principal also confirmed that the Nurse was finalizing the ISHP, which she would send to the Parent and Teachers 4 and 5.

The Student's first re-entry meeting was held January XX, 2020, between the Parent and Vice Principal. There is conflicting evidence from the Parent and Vice Principal regarding what was discussed at the first January XX, 2020, re-entry meeting. For example, the Parent told OCR that she informed the Vice Principal that she or her husband would accompany Student 2 on two upcoming field trips because Student 2 was concerned about the trips, but the Vice Principal told OCR she did not recall the Parent saying she or her husband would attend those two field trips. Following the January XX, 2020, re-entry meeting, the Vice Principal emailed the Parent with many details regarding the field trips, including a link for parents to sign up to be volunteers for

any X grade field trip. The Vice Principal also informed the Parent that copies of Student 2's ISHP went to Teachers 4 and 5, and the Counselor advised her that the Section 504 Plan was in progress.

In addition to meetings in January 2020 regarding Student 2's return to the School, there were also several emails between the Parent and School administrators. For instance, on January XX, 2020, the Nurse emailed the Parent with a draft ISHP, and the Parent responded on January XX, 2020, with one additional accommodation for parents to attend "school related off campus activities" with Student 2 (field trip accommodation). The Nurse replied to the Parent that the field trip accommodation required the parent accompanying Student 2 to be cleared as a volunteer in the District, and Nurse explained the volunteer requirements and process. On January XX and January XX, 2020, the Nurse emailed Teachers 4 and 5 an unsigned copy of Student 2's ISHP without the Parent's requested field trip accommodation. According to the Nurse, she wanted Teachers 4 and 5 to have Student 2's ISHP with all the agreed-upon health accommodations to help with Student 2's XXXXXXXX as she returned to the classroom on January XX, 2020.

The next attempt to support Student 2's return to school was her second re-entry meeting held on February X, 2020, and which also served as Student 2's Section 504 eligibility meeting. During this meeting, the Counselor stated she was told not to ask the usual Section 504 eligibility questions. The meeting participants discussed several Section 504 accommodations for Student 2, including: wellness checks with Nurse and Psychologist to see how Student 2 is feeling; reducing workload when Student 2 XX XXXXXXXX; allowing multiple ways for Student 2 to demonstrate knowledge; and putting Student 2's ISHP into her Section 504 Plan. The Section 504 team did not discuss field trip accommodations.

The next steps after the meeting were for the Counselor to draft a Section 504 Plan for the Parent to review. According to the Counselor, soon after the February X, 2020, meeting, she emailed the Parent with a draft of Student 2's Section 504 Plan. On February XX, 2020, the Counselor emailed the Parent asking for her feedback on Student 2's draft Section 504 Plan, and on February XX, 2020, the Parent responded that her feedback was delayed because she was reviewing the draft Section 504 Plan with the family's community support team.

As the School was awaiting the Parent's feedback on Student 2's draft Section 504 Plan, the School was finalizing Student 2's ISHP with the Parent. The Nurse and Parent emailed each other on February XX and February XX, 2020, regarding confusion regarding the ISHP – specifically, whether the ISHP included the Parent's January XX, 2020, request for the field trip accommodation. The Parent alleged to OCR that the District should have implemented Student 2's ISHP, including her requested field trip accommodation, in January and February 2020 so she could attend the two field trips. Ultimately, the Parent, Nurse, and Interim Principal (X---redacted content---X) met on March X, 2020, to finalize Student 2's ISHP. The Parent signed the ISHP on March X, 2020, and the signed version of the ISHP provided several accommodations, including allowing the parent to accompany Student 2 on off campus events, contingent upon submission of any required paperwork and teacher notifications.

Meanwhile, the Parent emailed the Counselor with additions to Student 2's draft Section 504 Plan on March X, 2020. She requested two more accommodations including (1) allowing for

parent to accompany student to certain off campus school events to ensure her participation and to prevent XXXXXXXX XXXXXXXX and (2) that all school staff, officials, and the entire student body refer to Student 2 using her legal name only. After consulting with the Head Counselor about the Parent requests, on March XX, 2020, the Counselor emailed the Parent with the Section 504 Plans for Students 1 and 2, and the Section 504 Plan for Student 2 did not contain the Parent's two additional accommodations from March X, 2020.

Ultimately, on June X, 2020, the Interim Principal emailed Student 2's Section 504 Plan, without the Parent's two March X, 2020, requested accommodations, to Teachers 4 and 5. According to the Interim Principal's email, Student 2's Section 504 Plan went into effect on March XX, 2020. Also on June X, 2020, the Parent reiterated her request that Student 2's legal name be used in the school setting, which should be an accommodation in her Section 504 Plan.

The District's Section 504 policies include a section titled "Parent Rights Concerning Section 504." These parent rights include the following: right to request a due process hearing to help resolve issues with the school; right to request the assistance of a mediator to help resolve issues with the school; right to examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program and placement; and right to file a complaint with the school if you feel your child is being discriminated against because of his/her disability.

The Counselor described to OCR her practice of providing parents a copy of the Section 504 Parent Handbook, including procedural safeguards, at the initial meeting, and she stated that the Parent received this Section 504 Parent Handbook during the 2012-2013 school year at Student 1's initial Section 504 meeting. The Counselor also stated that when procedural safeguards are discussed during meetings, parents often decline taking another copy, especially if their child has had a Section 504 Plan for years.

Also, according to the Counselor, the School did not provide Section 504 procedural safeguards to the Parent between December 2019 and June 2020, when the Section 504 team was developing Student 2's 504 Plan. Audio recording of the February X, 2020, Section 504 team meeting confirms that the District did not provide Section 504 procedural safeguards to the Parent with respect to Student 1 or Student 2 during that meeting. The resulting Section 504 Plan developed for Student 2, and finalized on March XX, 2020, did not indicate that the Parent had received procedural safeguards for Student 2. Meanwhile, Student 1's Section 504 Plan included a "Y" mark by the procedural safeguards section of the document.

Issue 2 Analysis

With regard to Issue 2(a), OCR found insufficient evidence that the District denied Student 2 a FAPE by failing to implement the ISHP with regard to the Parent attending field trips. Specifically, there is not sufficient evidence that the Parent attending the field trips was an agreed upon provision of the District's offer of FAPE. While the Section 504 team may have agreed that the implementation of the ISHP would be part of the provision of FAPE for Student 2, the evidence indicates that communications to the Parent at that time indicated that the District did not agree to include that provision of the Parent attending the field trips in the ISHP. In particular, the Counselor told the parents that they would need to follow the process for parent volunteers, which the parents did not do. Furthermore, even if the parties had in fact come to an

agreement regarding this provision, despite the fact that there was some degree of misunderstanding as to the two separate field trips, the Student was ultimately able to attend and participate in both field trips. Thus, there is no evidence that the actions by the District resulted in a denial of FAPE to Student 2 with regard to the field trips. Thus, OCR has determined as to Issue 2(a) that there is insufficient evidence that the District violated Section 504, Title II, or the implementing regulations.

With regard to Issue 2(b), based on its review of the evidence, OCR has concluded that the District failed to adhere to the procedural requirements of Section 504 with regard to Student 2. Specifically, the District failed to provide the Parent with Section 504 procedural safeguards. When the Parent and District disagreed over proposed accommodations for Student 2's Section 504 Plan, the District returned the draft Section 504 Plan to the Parent, without her requested accommodations and without information about how to challenge the decision, on March XX, 2020. In so doing, the District acted against its usual practice of providing procedural safeguards at or following a Student's Section 504 eligibility meeting. Here, those safeguards should have been provided at or following the February X, 2020, meeting, but instead the District relied on a prior copy of procedural safeguards provided to the Parent during the 2012-2013 school year as to Student 1 rather than Student 2. The following day, after receiving a copy of Student 2's Section 504 Plan, the Parent responded by reiterating her request for an accommodation that Student 2 be called only by her legal name, and the District again did not provide her with Section 504 procedural safeguards. Therefore, the District violated Section 504 and its implementing regulations with regard to Issue 2(b) when it did not provide the Parent with procedural safeguards as to Student 2 in the spring of 2020.

Issue 3

Legal Standard

Under the Title VI regulations, at 34 C.F.R. § 100.3(a) and (b), a District may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a District may not, directly or through contractual or other arrangements, on the basis of race, color or national origin, provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others, and/or deny an individual an opportunity to participate in the program through the provision of services or otherwise afford the individual an opportunity to do so that is different from that afforded others.

To determine whether a District has discriminated against an individual on the basis of race, color, or national origin under Title VI, OCR investigates whether that individual was treated differently than individuals of other races, colors, or national origins under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the District provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the District's actions were based on race, color, or national origin.

Factual Findings

According to the Parent, during 2019-2020 school year, Teacher 2 subjected Student 1, who is Black, to different treatment based on race during three separate classroom activities.

The Parent told OCR that during XXXXXXXX class, the class was playing XXXXXXXX XXXXXX as part of a class activity and the Teacher denied Student 1 the opportunity to play the game, and that this was due to the Student's race.

OCR reviewed an email from Teacher 2 to the Parent on October X, 2019. In the email, Teacher 2 wrote that during XXXXXXXX class, the students were ready to play XXXXXX and to practice XXXXXXXXXXXX. Student 1 threw a XXXXXX XXXXX at one of his classmates, and the XXXXXX XXXXX then landed on the floor. Teacher 2 then asked Student 1 to sit at a different table and practice XXXX XXXXXXXXXXXXXXX because his behavior was inappropriate. Instead of moving to another table, Student 1 became very upset and rushed out the door yelling that he was going to be excused and not sit at another table. Teacher 2 then went outside to talk to Student 1 about his behavior. She also reminded him that he needed to ask permission to be excused. Teacher 2 informed Student 1 that she would provide him with a few extra minutes to calm down. After a few minutes she went back outside to ask Student 1 to return to the classroom and work on XXXX XXXXXXXXXXXXXXX on the computer. Student 1 appeared to be calm, but he then picked up a XXXXXXXXX and threw it on a table very hard, causing all the students to turn to look. At that point, Teacher 2 decided to send Student 1 to the Counselor's office. The Parent sent Teacher 2 an email response on the same day, October X, 2019, and asked her what the antecedent or trigger was before this incident. In addition, she said that they would need to discuss a behavior plan for Student 1 at the next Section 504 meeting and identify his triggers and appropriate coping skills that he could implement to prevent further behavioral incidents. The Parent did not raise concerns in her email to Teacher 2 regarding different treatment based on Student 1's race.

According to Teacher 2, she could only recall this one October X, 2019, incident that involved Student 1 and XXXXXX XXXXXX. Teacher 2 stated that the class played XXXXXX once a week. On this occasion, Student 1 was throwing the XXXXXX XXXXXX, which bothered his tablemates who had asked him to stop. The tablemates knew that at the end of the game, if there were any loose items on the floor, then they would not be able to play anymore. However, Student 1 did not stop. Teacher 2 then also asked him to stop, and Student 1 became very upset. She told the table that if they wanted to play XXXXXX, they needed to be respectful and be engaged in the XXXXXXXXXXXX XXXXXXXXXXXX. If they could not do this, then they would be XXXXXXXXXXXX XXXXXX. She asked Student 1 to move to another table and he did not want to. The Counselor and Principal could not recall an October 2019 incident with Student 1.

The Parent also alleged that some time in mid-October 2019, and also in November 2019, the Teacher again excluded the Student from the XXXXXX XXXXX. The first time, she alleged it was because Student 1 XXXXXXX XXXXXX onto the table, and the second time was because Student 1 XXXXXXX XXXXXX. The Parent alleged that Student 1 was the only student excluded from the game, even though White students similarly engaged in the same behavior. Neither the Teacher nor the Principal recalled these other XXXXXX incidents described by the Parent. A review of the correspondence between the Parent and the School, as well as Student 1's file, does not reflect any mention of these incidents.

Analysis

There is insufficient evidence that Teacher 2 treated Student 1 differently based on race. When OCR analyzes allegations of different treatment, OCR first looks at whether there is evidence that the student was treated differently than students of other races under similar circumstances. In this case, the preponderance of the evidence shows that there are insufficient facts to establish that the incidents occurred and/or Student 1 and his White tablemates were engaged in similar conduct.

With respect to the XXXXXXXX XXXXX XXXX incident, the evidence shows that Teacher 2 sent an email to the Parent on October X, 2019, to notify her about this incident and said in this email and to OCR that Student 1 threw a XXXXX XXXX at a classmate and that other students were not doing the same. Although the Parent stated to OCR that other students besides Student 1 were X---redacted content---X in the classroom, she did not raise this issue in her October X, 2019, email response to Teacher 2, but instead asked about the antecedent and triggers that occurred before this incident took place.

OCR found insufficient evidence that the XXXXXXXX XXXXX XXXXX and the XXXXXXXX XXXXX XXXXX incidents occurred. Although the Parent stated that these incidents occurred, Teacher 2, school counselor, and former Principal could not recall them. OCR determined that there was no documentary evidence of these incidents in records reviewed by OCR. In addition, no emails or written correspondence between Teacher 2 and the Parent regarding these incidents were submitted to OCR. Therefore, OCR finds insufficient evidence to establish that the District violated Title VI with regard to Issue 3.

Conclusion

To address the complaint allegations and OCR's concerns identified in the investigation with regard to Issues 1 and 2(b), the District, without admitting to any violation of law, entered into the enclosed resolution agreement. 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.

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 evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

The Complainant has a right to appeal OCR's determinations with regard to Issues 2(a) and 3 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would

change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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, discriminate or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by the law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of privacy if released.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Jacqueline Layne (Jacqueline.Layne@ed.gov).

Sincerely,

/s/

Anamaria Loya
Chief Attorney

Enclosure