

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS



50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

March 18, 2021

VIA ELECTRONIC MAIL

Robert A. Haley, Ed.D.
Superintendent
San Dieguito Union High School District
robert.haley@sduhsd.net

(In reply, please refer to case no. 09-20-1380.)

Dear Superintendent Haley:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against San Dieguito Union High School District (District) filed on June 11, 2020. The Complainant alleged the District discriminated against the Student¹ on the basis of disability. Specifically, OCR opened for investigation the issue of whether the District denied the Student a free, appropriate public education (FAPE) by not implementing the provision for extended time to submit assignments in Fall 2019 in Advanced Placement (AP) XXXXXX, English XXX and Math, and in Spring 2020 in English XXX and AP XXXXXX classes at a high school in the District.

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.

OCR began its investigation by gathering and reviewing documents and correspondence provided by the Complainant and the District, and by interviewing the Complainant. Prior to OCR completing its full investigation, the District voluntarily agreed to address OCR's area of concern with respect to the implementation of the provision of extended time to submit assignments in Fall 2019 AP XXXXXX and English XXX classes, and in the Spring English XXX class from January X to March X, 2020. OCR further determined that there was insufficient evidence to conclude that the District failed to implement the Student's accommodation in the Fall 2019 Math class, in the Spring 2020 AP XXXXXX class, and in the Spring 2020 English XXX class after March X, 2020.

¹ OCR notified the District of the identity of the Complainant and the Student when the investigation began, and we are withholding names from this letter to protect personal privacy.

The legal standards, facts gathered, and the reasons for our determinations are summarized below.

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 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.

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.

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.

Factual Findings

During the 2019-20 school year, the Student was a XXXX-grader with a disability enrolled in a District high school (School). The Fall, 2019 semester began August XX, 2019 and ended January XX, 2020, with a winter break occurring between December XX, 2019 and January X, 2020. At the beginning of the 2019-2020 school year, the Student had a Section 504 plan that was updated during a Section 504 team meeting on September XX, 2019 at which the team added the accommodation of extended time on assignments as mutually agreed upon between teacher and Student. The September XX, 2019 Section 504 meeting notes stated that the Student's attendance was one of the primary concerns.

The Complainant alleged that extended time was not provided in the Student's Fall, 2019 AP XXXXXX, English XXX, and Math classes. The Complainant stated to OCR that she consented to the September XX, 2019, Section 504 plan. The Spring, 2020 semester began January X, 2020 and ended June XX, 2020. The Complainant alleged that extended time was not provided in the Student's Spring 2020 English XXX and AP XXXXXX classes. The District disputed the Complainant's allegations.

The Complainant stated to OCR that she was not explicitly told in writing that the Student was not allowed extended time for an assignment, but instead was told the Student's absences were making it impossible for him to make up work.

December X, 2019 Section 504 Team Meeting

The December X, 2019 Section 504 team meeting held by the District was attended by the Complainant and her advocate, the School nurse, the School Principal, the Counselor, the AP XXXXXX Teacher, the XXXXX Teacher, and the English XXX Teacher. The December X, 2019 Section 504 meeting notes stated the Student's attendance was one of the primary concerns. The Complainant stated that she was told during the December X, 2019 Section 504 team meeting that the Student could not have extended time to make up missed assignments in his AP XXXXXXXXXXXX classes, including AP XXXXXX, and English XXX.

The one-page Section 504 meeting notes document from the December X, 2019 Section 504 team meeting does not specifically reflect a change to the September XX, 2019 accommodation of extended time on assignments. The notes indicated that the Principal stated during the meeting that it was not possible for the Student to "get caught up" in his courses at that point in the semester. Subsequent to the December X, 2019 Section 504 team meeting, email communications between the Complainant, the School Principal, and the English XXX teacher demonstrated that there were different points of view and interpretations between the parties as to what assignments the Student could complete with extended time.

Fall, 2019 AP XXXXXX Implementation of the Student's Section 504 plan

The AP XXXXXX Teacher stated that he was aware the Student's 504 plan provided him with extended time on assignments. He stated that he provided the Student this accommodation by—in part but not limited to—revising some assignments, excusing the Student from some assignments, and working with the Student's support personnel. According to the AP XXXXXX Teacher, by the end of the first semester, the Student had a 50% attendance in AP XXXXXX with the Student making up virtually no work from his absences. He spoke with the Student during the Fall, 2019 semester and the Student indicated that he was having some health and other issues. He stated that he was willing to allow the Student to make-up missed work, but that he did not press the Student on completing the missing work as he was concerned it might add to his stressors. The AP XXXXXX Teacher stated he received "numerous assurances from the Student that the Student would make up the missing work."

The AP XXXXXX Teacher stated that he attended and said during the Student's December X, 2019 Section 504 team meeting that it was important for the Student to focus on assignments from that point forward, and not going back to assignments that had been assigned since October. Notes from the December X, 2019 Section 504 team meeting indicated that he stated that the Student had missed too much class at that point in the semester to be able to make up the amount

of missing work. The AP XXXXXX Teacher stated that for the Fall, 2019 semester, the Student was given a "X" grade.

Fall, 2019 Math Implementation of the Student's Section 504 plan

The Math Teacher stated that the Student's 504 plan provided him with extended time on assignments and that she provided the Student this accommodation by providing the Student unlimited time to make up assignments. The Math Teacher also stated that she and the Student communicated about his 504 accommodations when he was in class, and on occasion also by email that showed the Student requesting and receiving a three-day extension to turn in an assignment. The Math Teacher stated that the Student did not make up any of his 19 missed assignments even though she gave him the option to turn any missing one in at any time. The Math Teacher did not attend the December X, 2019 Section 504 team meeting. The Math Teacher stated that for the Fall, 2019 semester, the Student was given a "X" grade.

Fall, 2019 English XXX Implementation of the Student's Section 504 plan

The English XXX Teacher stated that she was aware the Student's plan provided him with extended time on assignments. The English XXX Teacher stated that she emailed the Student and Complainant about missed assignments, spoke to the Student about them, and offered the Student extended time for assignments, including offering the Student to the end of the Fall, 2019 semester to complete all of his work yet he did not submit enough work to show mastery of the subject for the Fall, 2019 semester. The English XXX Teacher was unable to provide to OCR a copy of any email for Fall, 2019 to the Complainant or the Student about missed assignments. The Complainant informed OCR that the Student said the English XXX Teacher denied his oral requests for extended time on assignments.

The English XXX Teacher attended the Student's December X, 2019 504 team meeting and the notes from this meeting showed that English XXX Teacher described the class as being based on attendance for class activities and discussions, but she was not recorded in the meeting notes as having specifically mentioned assignments during the 504 team meeting. The notes indicated she said during the meeting that it would be hard for the Student to catch up on missed knowledge in the course and she did not want to cause the Student more anxiety by ". . . adding to stress of makeup work." The English XXX Teacher stated that for the Fall, 2019 semester, the Student was given a XX percent grade.

In an email during the winter break dated January X, 2020, the Student asked the English XXX Teacher about making up his missing work and on January X, 2020 the English XXX Teacher replied by email, writing that she was unclear with two weeks left in the semester what to do, and offered to reply to the Student once she communicated with the Principal and the Counselor. OCR obtained no further emails that showed further communication between the Student and the English XXX Teacher about his January X, 2020 inquiry.

The Complainant stated to OCR that there were no communications between the Student and the English XXX Teacher that showed he was, or was not, permitted to have extended time on assignments between December X, 2019 and January XX, 2020, the end of the semester.

Spring, 2020 IEP team meeting

On March X, 2020, the District held an IEP team meeting for the Student and the Student's case manager stated to OCR that she provided all of the Student's teachers with a copy of the IEP

after the IEP team meeting. The District's offer of FAPE included the service of providing the Student extended time on assignments, either the same number of days to complete assignments as days missed or as negotiated by the Student with the teacher.

The Student's March X, 2020 IEP included a goal for self advocacy that referred to the Student's missing assignments in AP XXXXXX, English XXX, Math, and AP XXXXXX. This goal required the Student to identify when he had an "academic challenge" such as a missing assignment by independently emailing the teacher and case manager, or scheduling an appointment with the teacher and then negotiating a solution with the teacher to get his assignments turned in. The March X, 2020 goals also included the Student using an electronic agenda to help complete assignments on time or by the extended deadline, with a target of no more than four missing assignments over four consecutive weeks. To address the Student's ability to attend class, the March X, 2020 goals included individual counseling to identify the triggers for anxiety and to employ coping strategies before he lost his ability to attend class.

The notes from the March X, 2020 IEP team meeting referred to the Education Specialist asking, during a review of the draft IEP's goals and offer of FAPE service, whether any additional accommodations would be helpful, and recorded the Complainant reporting that the draft IEP accommodations "look[ed] good." The Complainant stated to OCR that she recalled making this comment, and that she consented to this and all other IEPs during the 2019-20 school year. The notes recorded the Student commenting during the meeting that the way the Math Teacher provided ways to make up assignments made it easy for him to make up assignments.

The School closed March XX, 2020 due to the covid-19 pandemic and began distance learning.

Spring, 2020 English XXX Implementation of the Student's IEP

The English XXX Teacher provided little or no detail to OCR about providing the Student extended time on assignments between January XX and March X, 2020, the date of the IEP team meeting that put in place a different extended time for assignments service.

The English XXX Teacher stated that once the Student had an IEP, she and the Student's case manager encouraged the Student to communicate with them, but that he never contacted her with any work or any questions or any communication and that he never turned in any assignments during the Spring, 2020 semester. The English XXX Teacher stated that once the School transitioned to distance learning after March XX, 2020, she spoke weekly with the Student's case manager about the Student and provided on April XX, 2020, a plan for the Student to make up the nine missing assignments for the semester. She stated that the Student never contacted her to provide her any completed assignments or to ask any questions. She stated that the Student's case manager emailed the Student on May XX, 2020 asking if he was ready for the English XXX Teacher's help on his research paper, but never received a response. The English XXX Teacher stated that for English XXX for the Spring, 2020 semester, the Student was given a XX percent grade.

Spring, 2020 AP XXXXXX Implementation of the Student's IEP

Regarding implementation of the Student's 504 plan before March X, 2020, the AP XXXXXX Teacher stated that he always gave extensions for lab work and projects assigned. The AP XXXXXX Teacher stated that before and after the transition to distance learning and under the Student's IEP, he offered to work remotely with the Student, but the Student turned in for the semester only five out of seven assignments, each with at least an extension of 25 days. He

stated that he was asked for extensions by the Student or the Complainant either once an assignment was due, or an incomplete assignment had been posted, and that he agreed to accept assignments up until the day he was required to post his Spring, 2020 grades, but did not hear anything further from the Student. The AP XXXXXX Teacher stated that for AP XXXXXX for the Spring, 2020 semester, the Student was given a XX percent grade.

The School psychologist who assessed the Student prior to the March X, 2020 IEP team meeting stated to OCR that as part of her assessments, she reviewed and analyzed the Student's attendance records and patterns of absences that showed not only a significantly higher number in morning class absences, but also in the Student's nonpreferred classes. She stated to OCR that she sent the Student weekly check-ins from March XX to June XX, 2020 and on March XX, 2020, the Complainant responded that the Student did not need this support, and the rest of her check-ins went unanswered until the Complainant emailed June XX, 2020, explaining that she believed the Student's would be unable to participate in counseling sessions.

The Student's case manager stated that she emailed the Student at his School and personal email address around 14 times between March XX and May XX, 2020 to check in remotely but the Student only responded four times, starting May X, 2020. She stated that she either spoke to or emailed all of the Student's teachers the week before distance learning started, and all teachers understood that the Student could make up his assignments from the beginning of the Spring, 2020 semester but that the Student did not respond to the emails, the plans created for assignments, or any of the email check-ins until May X, 2020.

Additional IEP team meetings Spring, 2020

The May XX, 2020 IEP team meeting held by the District added an intensive in-home service for the Student, but did not change the extended time for assignments service. The notes from the June X, 2020 IEP team meeting indicated that the Student had withdrawn from English XXX class, and that the team discussed the Student taking English over the summer, possibly with specialized academic instruction. The Complainant stated to OCR that she withdrew the Student from English XXX class, and that the District offered for the Student to take English over the summer semester, but that instead she enrolled the Student in one semester of English at a separate school, which he completed.

Legal Analysis and Conclusion

All elementary and secondary school students who are qualified individuals with disabilities, as defined by Section 504 and Title II, and who need special education and/or related aids and services are entitled to FAPE. Under Section 504, FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met and are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards. Implementation of an IEP developed in accordance with the IDEA is one means of meeting the Section 504 FAPE standard. To determine whether a district provided a student a FAPE where a Section 504 plan or an IEP has been offered by a district and agreed upon, OCR will evaluate whether district staff with responsibilities to provide services under a Section 504 plan or IEP provided them. A failure to implement a Section 504 plan or IEP can constitute an OCR finding of noncompliance with Section 504 and Title II.

Also under Section 504, a school district must conduct an evaluation of a student with an existing placement before making any subsequent significant change in placement. Section 504 also

requires any procedure used by a school district to arrive at such a change in placement to follow procedural requirements and apply procedural safeguards to any action taken regarding the identification, evaluation, or placement of a student that includes notice to parents of the availability of an impartial hearing.

Implementation of the Student's Section 504 plan in AP XXXXXX and English XXX

The Student's September XX, 2019 Section 504 plan required the Student to be provided, as mutually agreed upon between teacher and Student, extended time on assignments. The evidence showed the Complainant gave her consent to the services in the September XX, 2019 Section 504 plan offered as FAPE by the District.

The evidence from the investigation gathered to date showed that the AP XXXXXX and English XXX teachers appeared to have been initially interacting with the Student in an effort to mutually agree on the amount of extension for the due date of any particular assignment. However, after the Student accumulated several absences, the AP XXXXXX and English XXX teachers came to believe that the Student was not able to make up missed assignments while successfully completing new ones without an overburden of stress. The statements recorded during the December X, 2019 Section 504 team meeting made by both teachers reflected this belief. To reach a determination about whether the these teachers unilaterally and outside of the framework of a Section 504 team meeting decided not to give the Student extended time on missed assignments, OCR would need further information from the District; namely interviews with several employees for details surrounding the issue. However, prior to the conclusion of OCR's investigation, the District indicated its interest in voluntary resolution regarding the issue, and OCR determined that such a resolution would be appropriate to resolve the issue.

On March 15, 2021, the District entered into the attached Resolution Agreement (Agreement) which when implemented, is intended to resolve the concerns identified by OCR regarding the issue that was under investigation. Under the terms of the Agreement, the District agreed to hold a meeting of knowledgeable persons to consider how teachers and the Student understood the extended time accommodation and whether it was implemented in AP XXXXXX and in English XXX during specified periods of time. If the group determines the extended time accommodation was not implemented, it will further determine whether there are ways in which the Student could make up assignments or tests to improve his grade, or the necessity of compensatory and/or remedial educational services for the Student.

Implementation of Accommodation in Fall 2019 Math Class

The Complainant stated that the Fall, 2019 Math Teacher did not provide extended time on assignments to the Student. The evidence showed that the Fall, 2019 Math Teacher did not attend the Student's December X, 2019 Section 504 team meeting during which the accommodation for extended time for assignments was discussed. Evidence from the Fall, 2019 Math Teacher showed she provided unlimited time to the Student to make up assignments, even after December X, 2019, when she gave him, for example, a three-day extension for an assignment. Further, the Student's comment during an IEP team meeting that the Fall, 2019 Math Teacher made it easy for him to make up assignments further supports a conclusion that the Fall, 2019 Math Teacher provided him extended time on assignments. There was insufficient evidence to show that the District, for Fall, 2019 Math class, failed to implement the Student's Section 504 plan in violation of Section 504, Title II, and their implementing regulations and under OCR's Case Processing Manual (CPM) Section

303(a),² OCR finds that the District did not violate Section 504 and Title II with regard to this issue for Fall, 2019 Math class.

Implementation of Student's IEP in Spring 2020 Classes

The Student's March X, 2020 IEP provided that the Student was to be given extended time on assignments either the same number of days to complete assignments as days missed or as negotiated by the Student with the teacher. The IEP's description of this service and language in the IEP's goals emphasized the Student's self-advocacy and choice to be able to participate in negotiation over the period of the extension to be granted.

The period of the Spring 2020 semester for the English XXX class prior to the March X, 2020 IEP team meeting is discussed above. After the IEP meeting on March X, 2020, in English XXX, and from the beginning of the Spring 2020 semester on January X, 2020 for AP XXXXXX, the evidence showed that both teachers provided extended time, including with the assistance of the case manager, for the Student to complete assignments that the Student failed to complete or turn in. There was also evidence during this portion of the school year of communication between the Student and the Complainant, and District employees including teachers, the Principal, the School Psychologist, and the Student's case manager. These communications addressed missing assignments and plans to complete them within the context of the Student's IEP's attention to the development of the Student's self-advocacy and Student independence in negotiating solutions for getting assignments turned in, even though ultimately the Student did not turn in all assignments.

There is insufficient evidence to show that the District, for the English XXX class after March X, 2020 and for the AP XXXXXX class after the beginning of the Spring 2020 semester on January X, 2020, failed to implement the Student's IEP in violation of Section 504, Title II, and their implementing regulations. Thus, under OCR's CPM Section 303(a), OCR finds that the District did not violate Section 504 and Title II with regard to this issue for AP XXXXXX during the Spring, 2020 semester, and for English XXX during the Spring, 2020 semester after March X, 2020.

Conclusion

Based on the commitments made in the enclosed 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 Agreement is intended to address the complaint allegation. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

² Case Processing Manual (Aug. 28, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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 has a right to appeal OCR's determination with regard to the Fall, 2019 Math class, the Spring 2020 AP XXXXXX class, and the Spring 2020 English XXX class after March X, 2020, 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 Recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

If you have any questions about this letter, please contact the case resolution team.

Sincerely,

/s/

Kana Yang
Team Leader

Enclosure

cc: Randall L. Winet, Attorney for the District (*via electronic copy only*)