



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

November 15, 2022

VIA ELECTRONIC MAIL

Dr. Darnise Williams
dwilliams@seq.org
Superintendent
Sequoia Union High School District
480 James Avenue
Redwood City, CA 94062

Re: OCR Complaint No. 09-21-1110

Dear Superintendent Williams:

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

1. Whether the District denied the Student a free appropriate public education (FAPE) by failing to implement a late pass accommodation in the Student's Section 504 plan during the fall 2020 semester of his Advanced Placement (AP) XXXXXX course;
2. Whether the District failed to adequately respond to an internal complaint in its February XX, 2021, response to a complaint that the Student was discriminated against on the basis of disability when his Section 504 plan was not implemented during the fall 2020 semester of his AP XXXXXX course; and
3. Whether the District denied the Student a FAPE by failing to follow adequate procedures for evaluation and placement.

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

¹ OCR previously provided the District with the identity of the Complainant and Student. 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.

that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, OCR concluded that the District violated Section 504 and its implementing regulation with regard to Issue Nos. 1 and 2. OCR identified concerns with respect to Issue No. 3. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.3(j)(1)(i), and the Title II regulations, at 28 C.F.R. § 35.104, define an individual with a disability as one who has a mental or physical impairment that substantially limits one or more major life activities. The ADA Amendments Act of 2008 (Amendment Act) emphasizes that the definition of disability should be construed broadly. Pursuant to the Amendments Act, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, equipment, auxiliary aids and services or other such measures. The impact of mitigating measures may, however, be pertinent to whether a student needs special education or regular education with related services.

The Amendments Act also explicitly added the major life activities of concentrating, thinking, neurological function, brain function, and communicating to the original non-exhaustive list, and clarified that the operation of a major bodily function, such as the immune system, respiration, and other functions, are also considered major life activities. An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity.

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a 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. 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.

OCR evaluates the appropriateness of a district's response to notice of disability discrimination by examining reasonableness, timeliness, and effectiveness. What constitutes a reasonable response will differ depending upon the circumstances. However, in all cases the district must conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, remedy the effects of the discrimination, and take steps to prevent the discrimination from recurring.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate discrimination and will be responsive to any student reports of discrimination. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Findings of Facts

Advanced Placement XXXXXX Assignment

During the 2020-2021 school year, the Student was enrolled as a XXXXX at a District high school (School). He is eligible for accommodations and services under Section 504 due to diagnoses of attention deficit hyperactivity disorder (ADHD) and depression. The Section 504 plan in effect during the relevant time period was developed at the Student's initial Section 504 meeting on October XX, 2019. At issue in this matter, the Student's October 2019 Section 504 plan included an accommodation stating in total, "[t]eachers will make available up to two late passes per course per semester."

On or about September X, 2020, the Student's AP XXXXXX teacher (Teacher) assigned the class a series of ten (10) journal entries to be submitted together at a later, "random day" that the Teacher would announce without warning. The ten (10) journal entries were worth a total of thirty (30) points toward the fall 2020 semester grade. During this time, all classes at the School were conducted virtually due to the COVID-19 pandemic.

On or about October XX, 2020, the Teacher told students to submit their journal entries to date through the class's online portal. That day, the Student did not submit any completed journal entries.

On October XX, 2020, the Teacher emailed the Student noting that he had not submitted his journals and told the Student that if he were to turn them in that day, he would receive a ten percent (10%) penalty. The Teacher wrote that the penalty for submitting the assignment later would increase ten percent (10%) per day up to fifty percent (50%) on Tuesday with no submission of the journal accepted beyond Tuesday. That evening, the Student responded to the Teacher that he was working on catching up on the journals and would turn them in as soon as possible. The Student wrote, "when quarantine hit, I was in the process of working out my 504 accommodations for ADD and depression, but the effects of these diagnoses on my school work has only gotten worse during distance learning." He further wrote that he planned to speak to the Teacher during office hours on the next school day to explain his situation.

On XXXXX, November X, 2020, the Teacher emailed the Student reminding the Student that he could submit his journals that day or the next for a penalty and could not submit the assignment after that.

On November X, 2020, the Complainant emailed the Teacher, and asked that the Student be permitted to use his late pass accommodation for the journal assignment because the Student was "not well" and that each journal entry was taking him hours.

On November X, 2020, the Teacher emailed the Complainant stating that the Student had used one late pass on a previous assignment. The Teacher stated that the journal entries were to be completed over the course of ten (10) sessions and that he had explained to the Student that he could have an additional five (5) days to complete it but that the Student did not submit anything within that timeframe. The Teacher wrote that the Student could turn in one more assignment past its due date but not this journal assignment. The Teacher added that if the Student was "having difficulty keeping up with the pace and expectations of this elective AP course," then he should see his counselor.

The Student told OCR that he met the Teacher during office hours to explain that his assignment was late because the isolation of the pandemic had exacerbated his symptoms. According to the Student, the Teacher responded, "just because you have a 504 doesn't mean I can treat you differently," and reiterated that he would not accept a late pass on the journal assignment because the journal was several separate assignments. The Student stated that the Teacher's comments made him hesitant to ask for his accommodations in his classes.

The Teacher told OCR that he became aware of the Student's Section 504 accommodations at the beginning of the 2020-2021 school year through the District's online student database. He stated that he did not have any questions regarding implementation of the accommodations and spoke with no one about the Student's Section 504 plan at the beginning of the year. The Teacher said that he interpreted the accommodation as written to require the Student to ask to

turn in an assignment late and they would together agree upon a time-frame. The Teacher did not attend any Section 504 meetings for the Student.

During his interview with OCR, the Teacher denied having had any email communications with the Student regarding the journal assignment and the Student's disabilities until OCR referred the Teacher to the October XX, 2020 emails and read portions to him. He then admitted that the Student reached out about how his disability-related symptoms had been exacerbated by the isolation associated with the pandemic and how that had impacted the journal assignment completion. The Teacher told OCR he had not shared these email communications with his supervisor as part of the District's subsequent investigation into this matter because he hadn't been asked about it.

The Teacher further asserted that the Student never asked to use a late pass or for additional time on the journal assignment. He told OCR that he offered a penalized five (5)-day extension to all students in the class but that he had offered a non-penalized extension to the Student verbally during office hours. The Complainant and the Student dispute this. OCR received no email or other written documentation to support the Teacher's version of events.

In its written response to this complaint, the District maintained that the Teacher provided the Student a five (5)-day extension, which the District states was more than was required by the Section 504 plan, but that the Student "failed to avail himself" of that accommodation. During interviews with OCR, District administrators stated they were not aware that this extension was penalized.

The Student received a zero on the journal assignment and ended the semester with a C+ for the class. The Student provided OCR with a copy of his completed journal assignment, which he said he completed approximately two weeks after the due date and for which he received zero points.

On November XX, 2020, the Section 504 team met for an annual review of the Student's Section 504 plan. During the meeting, the Complainant reported a concern that the Teacher had failed to accommodate the Student with respect to the journal assignment. The Administrative Vice Principal (AVP) told the Complainant to speak with the Student's counselor and the Teacher to discuss the Complainant's concern.

On December X, 2020, the Complainant emailed the AVP saying that the Section 504 Coordinator had referred her to the AVP to discuss her concerns about implementation of the Student's Section 504 plan in the Teacher's class. The AVP and the Complainant met on December X, 2020, to discuss the journal assignment. Notes from the December X, 2020, meeting do not reflect any discussion of how the District might address an allegation of disability-based discrimination or a Section 504 dispute.

Relevant District Policies and Procedures

The District's Board Policy (BP) 1321.3 and Administrative Regulation (AR) 1321.3 lay out the District's uniform complaint procedures (UCP). According to BP 1321.3, the UCP process should be used to investigate and resolve any complaint alleging violation of applicable state or federal law under multiple listed programs, including special education programs. If a complaint is not filed in writing but the district receives notice of any allegation that is subject to the UCP, the district shall take affirmative steps to investigate and address the allegations. The UCP includes multiple procedural requirements, including timelines for initiation of investigations, obligations to collect and review all relevant data, and information to be included in a written report of any decisions made.

The District's policies and procedures for identification and education under Section 504 are contained within BP and AR 6164.6. The policy lists the Director of Student Services as the designee for implementing Section 504 requirements. Under this policy, parents are entitled to request a Section 504 due process hearing if a parent disagrees with any district action regarding identification, evaluation, or placement of their child under Section 504. The District states that it provides notice of procedural safeguards to parents or guardians.

The District's BP and AR 5125.3 outlines procedures for challenging student records. It provides parents the right to present to the Superintendent or designee a challenge the contents of student records, which parents allege are, among other things, misleading or inaccurate. Under the policy, "after considering all relevant information," the Superintendent or designee will either sustain or deny the allegations. Challenges or appeals to the District's determination are to be brought to the Board of Trustees. AR 5125.3 does not include any reference to Section 504 or disputes regarding provision of disability-related services or supports.

The District's Response to Complainant's AP XXXXXX Concerns

The District told OCR that because it provides Section 504 procedural safeguards to parents and board policies are available on the District website, the Complainant was "on notice" of her right to initiate a Section 504 review in this matter but did not do so. The administrators interviewed by OCR did not know how the decision was made to address the concern as a grade challenge as opposed to as a discrimination claim or Section 504 dispute. The District maintains, instead, that it understood the Complainant's concerns regarding implementation of the late pass accommodation not as a Section 504 issue but as a challenge to the Student's AP XXXXXX grade and that it therefore followed the procedures laid out in AR 5125.3.

On or about February XX, 2021, the District provided the Complainant written notice of its findings related to a grade review. The review was conducted by a site-level administrator. The report states that it focused on the journal assignment and the Section 504 accommodations within the Student's October 2019 plan. The report does not state which policies, procedures, or evidentiary standards were used; however, the District told OCR that the grade review was completed pursuant to BP and AR 5125.3.

According to the report, the site-level administrator spoke with the site AVP, the site Section 504 Coordinator, the District's Director of Student Services, and the Complainant. The Student did

not participate in interviews per the Complainant's request. The three-page report includes a two-page summary of the Teacher's response to the grade review. Beyond the list of people spoken to and the Teacher's email response, there is no reference to any emails or other documentation related to the Complainant's concerns that was reviewed. The site administrator found that the Complainant's assertion that the Student's Section 504 accommodation for his depression and ADHD was not implemented for the journal assignment was not supported by the evidence. Therefore, the Student's grade was not changed.

The report further states that the District and site-level staff with whom the investigator spoke concluded that the accommodations were implemented "based on the information they have." There is no statement about what that information is. The report found that the Student did not use his late pass for any journal entries and that the Teacher gave the Student five (5) additional days to submit his assignment. The report advised the Complainant that she could appeal the decision to the site principal (Principal).

Per the grade review report's instructions, on March XX, 2021, the Complainant appealed the grade review findings to the Principal. On May X, 2021, the Principal informed the Complainant of her determination that the Teacher had supported "the spirit" of the Student's Section 504 plan by providing a five-day extension on the assignment. The Principal based her decision on a "review of the documents," but does not state what those documents were.

In interviews with OCR, District and site-level administrators reported that they were not aware of and had not reviewed emails between the Teacher and the Student and/or the Complainant. They were not aware that the Teacher had told the Student and Complainant by email that a late pass could not be used for this assignment. Additionally, District and site-level administrators said they were not aware that the five-day extension would have been penalized and that it was offered to all students in the class. One District administrator told OCR that she believed the denial of use the late pass and a penalty for late submission would violate the Student's Section 504 plan and that it would not be appropriate for the Student. The site AVP told OCR that an extension with a penalty would not be considered an accommodation under Section 504.

On May XX, 2021, the District convened the Student's Section 504 team. During the meeting, the Complainant shared concerns that the Student's needs were not being met because the active Section 504 plan contained vague terms that required the Student to request to use his accommodations.

On August XX, 2021, OCR provided the District technical assistance related to their obligations under Section 504. The training covered topics including implementing Section 504 plans, including within AP courses, procedures for evaluation and placement, and procedures for responding to and investigating complaints of disability-based discrimination, including failure to implement Section 504 accommodations.

On September XX, 2021, after receiving OCR's training, the District convened the Section 504 team for the Student's annual review and to consider whether the Student had been denied a FAPE in his fall 2020 AP XXXXXX class. With respect to accommodations, the Student shared

that an extension of three or five days would be fine with him so long as he would be able to extend the time if needed; he also shared that he did not want to be limited to what the plan said. The Complainant told OCR she was concerned that during the meeting the Student was downplaying his need for support. The Complainant stressed that while the Student was doing well at the time, the previous year his mental health fluctuated much more and he would need more flexibility in the accommodations should he again need additional support. The updated Section 504 plan permitted the Student an extension of up to three days on assignments and required him to work with teachers if he needed additional time.

With respect to the possible denial of FAPE, the Section 504 team relied upon the February 2021 grade review to reach its determination that the Teacher did give the Student a late pass for the assignment but that the Student didn't complete it or turn it in. The Complainant told the team that the Student was not allowed to turn in the assignment but that it was completed and he had it but was given a zero. She reported that the teacher told her he wasn't aware of the Student's diagnoses and that the Student felt the Teacher's behavior toward him was bullying and had caused a shift in the Student's feelings about school. The District told OCR that even if there had been a "procedural error" with respect to the accommodation, any error would be "*de minimus*" because the Student received "satisfactory marks that reflect meaningful access to his education."

Because the Student's final semester grade after receiving 0/30 for his journal assignment was a C+, and after the District refused to revisit a change in that assignment's grade, the Complainant chose to utilize an option provided by the State to change the Student's grade to a Pass on his transcript.

IDEA Assessment

During summer 2021, the District conducted an initial psychoeducational assessment following a referral from the Student's Section 504 team. The assessment plan, dated May XX, 2021, states that the assessment was proposed at the Student's Section 504 meeting "due to ongoing concerns with depression and attention problems impacting his ability to engage in schoolwork." The assessment sought to consider the eligibility categories of emotional disturbance, other health impairment, and specific learning disability. While the assessment plan notes that the Student had been receiving interventions through his Section 504 plan, there were concerns that depression and attention might still be impacting him at school.

On September X, 2021, the School Psychologist issued his assessment report. Based on the assessment results, the District found the Student was not eligible for an Individualized Education Plan (IEP) under the qualifying category of specific learning disability.

XXX-redacted content– XXX. The Complainant's scores were considered to be reliable by the School Psychologist.

XXX-redacted content-XXX. The School Psychologist noted that the Student's self-report was considered to be reliable.

With respect to ADHD, two of the Student's teachers completed the Conners – Third Edition (Conners-3) and their responses were considered to be reliable. Both teachers observed the Student as falling within the average range for students his age, "suggesting few ADHD symptoms are observed in the class."

The School Psychologist noted that the Student had diagnoses of depression and ADHD and that the Student was taking medication to treat ADHD symptoms. The Complainant told OCR that the Student was taking his medication during administration of the psychoeducational assessment. There is no discussion within the assessment report of whether the Student's medication might impact the presentation of his symptoms within the classroom. Nor is there any indication within the assessment report of whether or what part the ADHD medication might have played in the Student's evaluation or classroom performance.

On September X, 2021, the District convened an IEP team meeting to review the special education assessment. The Complainant shared that the Student had struggled with his ADHD and depression for the past year or so and asked if input was sought from the Student's teachers of the previous school year. She shared that he was now taking medication to help manage his ADHD and that she felt his reports from teachers would have been much worse prior to private therapy and medication. The IEP team found that the Student was not eligible for special education under the IDEA and that he would continue with his Section 504 plan.

Analysis & Determinations

Issue 1: Whether the District denied the Student a FAPE by failing to implement a late pass accommodation in the Student's Section 504 plan during the fall 2020 semester of his AP XXXXXX course.

OCR determined that the Teacher denied the Student's request to use his late pass accommodation for the journal assignment in his AP XXXXXX class in fall 2020 and that this failure to implement the Student's Section 504 plan resulted in a denial of FAPE that affected the Student's grade and made the Student reluctant to access his accommodations.

Despite the Student reaching out to the Teacher to explain that the assignment was late due to symptoms of his disabilities, the Teacher offered only the same penalized extension that was offered to all students. Further, the Teacher expressly told the Complainant that the Student could not use the late pass on this assignment, citing that the assignment was several assignments with one grade. While the Teacher maintains that, during a one-on-one conversation with the Student during office hours, he told the Student he could submit the journal assignment with no penalty, the Student told OCR that this did not happen and it is not reflected anywhere in the District's records. Based on the Teacher's lack of candor with OCR related to his email communications and the shifting rationales for not providing the Student an exception, OCR finds that the Teacher did not offer the Student a penalty-free extension. A penalized extension offered to all students is not a disability accommodation under Section 504.

As drafted, the accommodation at issue here was vague and left room for interpretation that was read against the Student in this case. This vagueness left interpretation to the discretion of the Teacher, who had not spoken with any School administrators about the Student's Section 504 plan and did not attend any Section 504 meetings. This contributed to the District's denial of FAPE. Under Section 504, the burden of interpretation should not fall to the student with a disability. It is a school district's responsibility to provide students with disabilities a FAPE; it generally should not be the responsibility of students at the elementary and secondary level to negotiate accommodations with their teachers. At a time when he required and requested support, none was offered, which in turn made the Student reluctant to use his accommodations. Statements from District and site-level administrators that a penalized extension would not comply with Section 504 and that such an extension would not be appropriate for the Student further support OCR's finding with respect to this issue.

Additionally, OCR identified a concern with the Teacher's comment implying that if the Student found his AP courses stressful, perhaps he was not suited to them. School districts' provision of necessary special education and related aids and services to qualified students with disabilities in accelerated programs must be consistent with the Section 504 requirements regarding provision of FAPE. As such, if a student's stress is a manifestation of his disabilities, then it is the District's responsibility to provide supports to the Student, not to imply that perhaps he is not up to the task. High-achieving students with disabilities are entitled to the same protections as all students with disabilities. Here, the District's emphasis on the Student's grades to argue that there was no denial of FAPE is inconsistent with Section 504. Grades alone should not be used to determine whether a student has a disability nor whether a student was denied a FAPE. A student with a disability may still achieve high grades. The question school districts must ask is whether their disability affects the condition, manner, or duration in which tasks are completed as compared to their non-disabled peers.

For the reasons outlined above, OCR found that the District violated Section 504 with respect to this issue. The Teacher's denial of the Student's request to use his accommodation on the journal assignment resulted in a drop in the Student's semester grade and caused reluctance to acknowledge his need for supports. As a result, OCR found that the District's failure to implement the Student's Section 504 accommodation constituted a denial of FAPE and, therefore, violated Section 504 with respect to this issue.

Issue 2: Whether the District failed to adequately respond to an internal complaint in its February XX, 2021, response to a complaint that the Student was discriminated against on the basis of disability when his Section 504 plan was not implemented during the fall 2020 semester of his AP XXXXXX course.

To determine whether a district's response to a complaint of disability discrimination is appropriate, OCR looks to the reasonableness, promptness, and effectiveness of the response. In this case, OCR determined that the District's response to the Complainant's claims of disability-based discrimination was neither prompt, reasonable, nor effective. As such, the District violated Section 504 with respect to this issue.

With respect to promptness, during the November XX, 2020, Section 504 meeting, the Complainant notified the District that she believed the Student's Section 504 plan was not implemented within his AP XXXXXX course. Instead of recognizing this concern as related to the Student's disability, the AVP, who was present at the meeting, referred the Complainant to the Student's counselor. In turn, the Complainant was eventually referred back to the AVP by the Section 504 Coordinator in early December 2020. Despite the Complainant's repeated statements that the Teacher had failed to accommodate the Student, the District made the decision to treat the complaint as a grade challenge. It was not until February XX, 2021, more than three months after the Complainant raised the issue, that the District issued an investigative report.

The District was unable to explain why it had chosen to address the Complainant's concerns through a grade challenge process. Even so, the process it followed does not comply with its own internal guidance related to grade challenges. AR 5125.3 states that appeals are to be referred to the Board of Trustees. Instead, the Principal affirmed the decision of the site-level administrator who wrote the report. Additionally, the District failed to consider all relevant information as required under their policy. There is no indication that the District requested email or other communications between the Teacher and the Student and/or the Complainant, which would have been relevant to their decision-making process. Instead, the report is based primarily on the email response to the allegation that the Teacher provided. This information failed to include the fact that the extension offered to the Student was penalized and that the Teacher had explicitly denied the Student the ability to use his accommodation on the journal assignment.

Further, the Principal's determination in her appeal response that the Teacher had supported the "spirit" of the Student's Section 504 plan is not a standard that exists under Section 504. Given that at every step of the way in the District's response, Section 504 was implicated, it is unreasonable for the District to have concluded that this was not a disability-related complaint. According to District policy, complaints of violation of law for special education programs are to be handled through the UCP process. Even if the District does not receive a complaint in writing, it still has an obligation to take affirmative steps to investigate. The District failed to do so.

Even after OCR provided technical assistance to the District regarding how to respond to complaints of discrimination under Section 504, the District failed to effectively respond to the complaint. Instead, at the September XX, 2021, Section 504 meeting, the team restated its position that the Teacher had offered an extension in excess of the requirements of the Section 504 plan and that the Student had simply failed to avail himself of that offer.

As a result of the District's delayed and ineffective response, the Student was forced to either accept the lower grade on his transcript or request a "Pass" on his transcript as provided by State law. The decision to seek the protections of State law in the face of the District's ineffective response constitutes continuing denial of FAPE to the Student.

As explained above, OCR found that the District's response to the Complainant's allegation of disability-based discrimination violated Section 504.

Issue 3: Whether the District denied the Student a FAPE by failing to follow adequate procedures for evaluation and placement.

OCR identified a concern that the District may not have followed adequate procedures during the Student's special education evaluation. Under the Section 504 regulations, the determination of whether an identified impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures, such as hearing aids or medication(s). This means that the analysis of the impact of an impairment on an individual must include assessing what the impact is *absent* such mitigating measures, including, as in this case, medication. At the high school level, mitigating measures may be relevant to whether a student with a disability needs special education; however, in this case, there is no evidence that the District considered the question of the possible effect of the Student's ADHD medication on his assessment, classroom performance, or his possible need for special education or related services.

Additionally, under Section 504, an impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. In such a case, school districts must consider the impact of the impairment on the student when it is active. Here, the Student was found eligible under Section 504 due to diagnoses of ADHD and depression. Though the Complainant raised a concern both in relation to the special education assessment and in relation to the development of the Student's September XX, 2021 Section 504 meeting that the decisions being made were not taking into account how significantly the Student had struggled with his mental health during the previous year, there is no indication that the District considered the mitigating factor of the Student's medication or the possibility of the Student's depression being episodic in nature.

OCR generally refrains from assessing the appropriateness of a school's evaluation and placement decisions for students with disabilities and, in this case, has made no determination regarding whether the Student should have been found eligible for special education and related services under the IDEA. OCR is, however, concerned that the records reviewed to date do not show that the District considered the impact of the Student's medication on the results of his special education assessment and the impact of the Student's depression on the Student's ability to access his education when it is active. However, prior to OCR reaching a determination with respect to this issue, the District agreed to resolve the concerns raised by OCR's investigation to date. To resolve the concerns raised by OCR's investigation to date, the District has agreed to include discussion of these factors within future training and guidance for all staff and administrators responsible for evaluation, placement, and implementation for students suspected of having disabilities.

Overall Conclusion

This concludes the investigation of this complaint.

To address the violations and concern identified in the investigation, the District, entered into the enclosed resolution agreement (Agreement). Through this Agreement, the District has agreed to provide guidance and training on the District's obligations with respect to evaluation and placement under Section 504, notify the Student and Complainant of the findings of OCR's investigation, include a letter in the Student's file explaining that the District failed to implement the Student's Section 504 accommodations during fall 2020 semester, allow the Student the opportunity to provide a written statement regarding the impact of this failure to implement, and provide for OCR to review the District's response to all reports and complaints of disability-based discrimination during the 2022-2023 school year.

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

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District must 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 Maria Asturias at maria.asturias@ed.gov or Lele Yutzy at lele.yutzy@ed.gov, the Civil Rights Attorneys assigned to this matter.

Sincerely,

/s/

Kana Yang
Team Leader

Cc: Jeff Maisen, Attorney for District (via email only)

Enclosure