



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 16, 2013

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Mr. Pedro Martinez
Superintendent
Washoe County School District
425 East Ninth Street
Reno, Nevada 89520

Re: Washoe County School District
OCR Reference No. 10131135

Dear Superintendent Martinez:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of a complaint filed against the Washoe County School District on April 29, 2013. The complaint alleged that the district retaliated against a parent for advocating at an October 30, 2012, Individualized Education Program (IEP) team meeting for a student by:

1. failing to implement the student's IEP;
2. failing to investigate the implementation of XXXXXX, the XXXXXX, or any other supplemental mathematics program;
3. threatening to curtail the parent's ability to advocate at the next IEP team meeting by cutting the meeting short if the advocate was present;
4. threatening that teachers may not be cooperative in implementing the student's IEP if the student's parent and the advocate continued to advocate for the student;
5. failing to invite the advocate and the student's father to an IEP team planning meeting; and
6. rescheduling the student's classes without prior notice to his parent or the student.

The complaint further alleged that the district denied the student a free appropriate public education (FAPE) during the 2012-2013 school year by failing to implement the following provisions of his IEP:

1. The student's teachers failed to e-mail homework assignments, including documents, PowerPoint, and assignments requiring written responses.
2. The student's teachers failed to breakdown multi-part assignments into parts or monitor progress on multi-step assignments.
3. The student's teachers failed to ensure the student's use of a laptop or implement a behavior incentive plan.
4. The student's teachers failed to provide scoring rubrics to the student at the beginning of relevant assignments.
5. The student's teachers failed to ensure the use of an electronic planner for noting daily class activities, assignments, due dates, and homework.
6. The student's teachers failed to ensure the student's use of accessible instructional materials.
7. The student's teachers failed to implement XXXXXX, or any other supplemental mathematics program.
8. The student's case manager failed to provide quarterly reports in a timely manner.

OCR conducted an investigation of the complaint under section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990, which prohibit retaliation and discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district receives federal financial assistance from the Department and is a public entity, and is therefore subject to these regulations.

Through its investigation, OCR determined that the evidence was insufficient to conclude that the district retaliated against the student's parent for her advocacy at the October 30, 2012, IEP team meeting. However, OCR determined that the evidence was sufficient to conclude that the district denied the student FAPE by failing to implement provisions of his IEP.

OCR's findings of fact, analysis, and conclusions set forth below, are based upon documents provided by the student's parent and the district and upon information obtained through interviews with the student's parent and district employees. To address the compliance concerns identified by OCR during its investigation, the district has agreed to take the actions provided for in the enclosed settlement agreement.

Findings of Fact

1. The student is eligible for an IEP under the Individuals with Disabilities Education Act (IDEA) under the category of XXXXXXXXXX.
2. On May 24, 2012, the student's IEP team convened in order to make revisions to the IEP that would transition with the student to high school for the 2012-2013 school year. Included in the student's transition IEP were the following related aids and services: (1) teachers would e-mail homework assignments including documents, PowerPoint presentations, and assignments requiring written responses; (2) large, multi-part assignments would be broken into parts; (3) progress would be monitored on multi-step assignments by teachers; (4) the student would have use of an electronic planner for noting daily class activities, assignment due dates, and homework; (5) the student would be verbally prompted to get and use his laptop at the beginning of class; (6) the student would use an iPod to listen to music when there are distractions; (7) a scoring rubric would be provided to the student at the beginning of relevant assignments; (8) the student would have a behavior incentive plan; and (9) progress on mathematics goals would be measured by MAP¹ and ALEKS².
3. The May 24th IEP also states that the method for reporting the student's progress toward meeting annual goals would be both a quarterly district report card and a quarterly "specialized report card."
4. The student enrolled in XXXXX at the start of the 2012-2013 school year. XXXXXXXX is a web-design academy at XXXXXXXX. He attended XXXXXXXX on an attendance variance because his assigned home school would have otherwise been XXXXXXXXX.

¹ According to the district's website, MAP stands for Measures Academic Progress. It is described as a Common Core-aligned computerized adaptive assessment program.

² According to its website, ALEKS stands for Assessment and Learning in Knowledge Spaces. It is described on its website as a web-based artificially intelligent assessment and learning system that uses adaptive questioning to determine what a student knows in a course and then instruct the student on the topic he or she is most ready to learn.

5. On October 30, 2012, the student's IEP team convened for his annual review. According to the student's parent, she was informed by the student's case manager prior to the meeting that the XXXXX could not be implemented because there was no funding for the program. The parent informed OCR that this became a point of contention during the student's annual review and both she and the student's advocate raised concerns regarding the student's progress. The parent described the IEP team meeting to OCR as unsuccessful and frustrating. District staff described the IEP team meeting as adversarial and hostile. District staff explained that there was a great deal of information to go over, but staff felt as though the IEP team was stuck on one aspect of the IEP and unable to move forward.
6. Following the IEP team meeting, the parent contacted the XXXXXX and requested a meeting with him. According to the parent, she initiated the request because she wanted to extend an olive branch so that the student would receive the services he needed. The XXXXXXXX agreed to meet with the parent on November 2, 2012. The parent and XXXXXXXX were the only two people present for this meeting. They reported conflicting accounts to OCR regarding what took place.
7. According to the parent, she began by explaining that she did not want to engage in litigation, she just wanted to make sure the student was receiving the services he needed. However, the XXXXXXXX changed the subject and told her that she could not continue to have the student's advocate present at IEP team meetings. He continued by saying that if the advocate was present, IEP team meetings would be cut short. The parent also informed OCR that the XXXXXXXX told her he evaluates the student's teachers and that the likelihood of them giving the student services was slim. The parent inferred from that statement that, if she kept advocating for her son, the XXXXXXXX would make sure that the teachers would not provide the student services.
8. According to the XXXXXXXXXX, he does not evaluate the student's teachers and he would never make such a comment. He told OCR that the meeting started with the parent expressing that she did not feel supported by the teachers. The XXXXXXXXXX expressed to the parent that he felt the teachers were very supportive but that the advocate and parent did not appear to be hearing what the teachers were trying to say. The XXXXXXXXXXXXX informed OCR that he was trying to let the parent know that the teachers were there to help. The XXXXXXXX acknowledged saying that the annual IEP team meeting had gone long and that they had not gotten very far in the process. He said that, if the advocate was there for the next meeting, he would try to make sure they were more on track.

He also said that he would try to hold the next IEP team meeting for an hour and then, if more time was needed, they would schedule another meeting. According to the XXXXXX, he specifically said that it was the parent's choice and legal right to have the advocate present at the IEP team meeting. He said that the meeting ended with both him and the parent saying it was a good meeting and they felt like they understood each other better. He said the parent thanked him for his honesty and forthrightness, and there was no indication to him that the parent felt intimidated.

9. Following the November 2nd meeting, an invitation was sent to the parent to convene a meeting with the XXXXXX. According to the parent, she did not understand why the invitation was sent or why they would have a meeting before reconvening the IEP team. She was especially concerned that the invitation was not sent to her husband or to the advocate.
10. According to the XXXXXXXXXXXX, the invitation was sent as the result of the November 2nd meeting. He had suggested that a meeting between the parent and XXXXXXXXXXXX would be a good idea so that they could resolve the concerns that had been the focus of the prior IEP team meeting. He felt that the XXXXXXXXXXXX and parent might want to meet separately from the IEP team to resolve those concerns and then call back the full IEP team to continue the annual review. The XXXXXXXXXXXX acknowledged that he did suggest that the XXXXXXXXXXXX not bring other people and that the parent not bring the advocate. He said that the parent appeared resistant to the idea of having a meeting without the advocate, so he did not pursue the idea further. The parent confirmed that, once she expressed concerns about such a meeting, the district moved forward with scheduling the full IEP team.
11. On November 7, 2012, the parent received notice that the district changed the student's XXXXXXXX class from seventh to sixth period. The parent complained and the district immediately returned the student to his original schedule. The complainant feels that the change was made because of her advocacy on behalf of the student. She based her belief on the fact that there had never been a discussion about the student's need to change his XXXXXXXX class period.
12. The student's case manager informed OCR that she was responsible for the change in the student's schedule, but denied that the change was retaliatory. The case manager explained that she teaches XXXXXXXXXXXX in addition to her case manager responsibilities. XXXX is a special education course in which students receive assistance with organization, study skills, and work completion. Following the October 30th IEP team meeting, the

case manager received and reviewed a neuropsychological report that had not previously been placed in the student's IEP file. She felt that the report explained a great deal about the student's focus and attention needs. Her seventh period XXXXXXXXX course had 15 students, including 14 boys and one girl. However, her sixth period XXXXXXXXX class only had six students. The case manager felt it would be beneficial to move the student to her sixth period course so that he could be in a smaller class with less distraction. The change would also free up the student's schedule so he could have Algebra seventh period when additional push-in support could be offered to him.

13. According to the case manager, there was a miscommunication and she thought the counselor would discuss the proposed schedule change with the parent. However, that did not occur and the parent was not notified until after the change was made. Once the parent complained, however, the schedule was immediately changed back.
14. Between November 5, 2012, and the student's next IEP team meeting on December 12, 2012, the district changed the student's case manager to case manager 2 and the XXXXX replaced the XXXXXXXXX as the lead administrator responsible for the student's IEP. According to the parties, the December 12th IEP team meeting was less adversarial. The district prepared an agenda and the IEP meeting followed the agenda. The advocate was present at the IEP team meeting. The meeting was not cut short. At the conclusion of the IEP team meeting, the parents did not agree with the district's recommendations and did not consent to implementation.
15. In January 2013, the student transferred to XXXXXXXXX. According to the parent, the student failed his web-design course because his IEP was not implemented. As a result of failing the course, the district informed her that the student could not continue in XXXXX. The district would allow the student to remain at XXXXXXXXX for the remainder of the year, but he would not be allowed to attend after the 2012-2013 school year ended. Based on this, the parent and student decided the student should transfer to his zoned school at the semester's end rather than wait for the school year's end.
16. The student's new case manager, case manager 3, convened IEP team meetings on February 28 and April 4, 2013. However, the parent did not agree with the proposed IEP and did not consent to its implementation. Accordingly, the May 2012 transition IEP remained the last agreed upon IEP throughout the 2012-2013 school year.

17. OCR interviewed each of the student's teachers at both XXXXX and XXXXXXXX. All teachers reported receiving notice of the student's IEP. XXXXX teachers reported that they were provided information regarding the student's IEP at the beginning of the school year. Staff reported that they became fully aware of the complainant's expectations for implementation of the IEP at the October 30, 2012, IEP meeting, and made changes to better implement the IEP based on parental feedback. Efforts were made by the district to improve implementation of such elements as tracking technology usage and utilizing Dropbox technology to e-mail assignments and notes. XXXXXXXXXXXX teachers reported that they were provided information regarding the student's IEP once he transferred and became fully aware of the complainant's expectations for implementation of the IEP at the February 28th IEP team meeting.
18. There is no dispute that the district failed to implement the XXXXXX program for the student throughout the 2012-2013 school year. District staff acknowledged that they did not have the program at the high school. While staff informed OCR that they were taking steps to obtain a license for the XXXXXXXX program, at the time of OCR's interviews, the program was still not available. Moreover, in an e-mail from the principal to staff in January 2013, the XXXX states, "It has been explained numerous times to [the parent] that we do not currently have XXXX and it is not something we are going to address."
19. The student's IEP says that teachers will e-mail homework assignments, including documents, PowerPoint presentations, and assignments requiring written responses. In an interview with the parent, she indicated that this was sometimes done through the Dropbox system that teachers could access for the student. However, she says that teachers were inconsistent in using Dropbox or otherwise e-mailing in accordance with the IEP.
20. Interviews with staff appear to support the parent's contention that implementation of this IEP provision was inconsistent. One teacher reported that he would provide notes to the special education office for the student to access rather than e-mailing. Another teacher reported that she had difficulty with implementing that provision of the IEP but that it did not appear to be an issue for the student since he was strong in her class and did not appear to need that support. One teacher initially e-mailed assignments, but discovered that she had an incorrect e-mail address for the student so she sent smaller e-mails in February and April. Another teacher reported that he was unsure whether he put his PowerPoint presentations on

Dropbox, but believed everything else was provided. Three teachers reported that they consistently used the Dropbox but that the student rarely logged in to access the materials.

21. The parent alleged that the student's teachers failed to break down multi-part assignments into parts or monitor progress on multi-step assignments. Many teachers reported that they did not assign multi-step assignments to which this provision would apply. Interviews with staff who did assign multi-step assignments indicated that this IEP provision was consistently implemented by teachers.
22. The student's IEP says that the student will have use of an electronic planner for noting daily class activities, assignment due dates, and homework. Teachers reported that this was implemented by allowing the student to use his telephone as an electronic planner. Many teachers also noted that they had class websites where the student was able to access class information. The student's case managers at XXX also indicated that they would check to make sure the student was recording assignments in his phone.
23. The student's IEP says that the student would be verbally prompted to get and use his laptop at the beginning of class. The IEP also says that the student was also supposed to have a behavior incentive plan to target refusal to use the laptop and his failure to turn in assignments. All teachers reported verbally prompting the student to use his laptop and his other technology in accordance with the IEP. However, teachers reported that the student either refused to use his laptop or failed to bring it to class.
24. For the behavior incentive plan provision of his IEP, at XXXXXXXXX a behavior plan was created in which all teachers reported daily information in Dropbox regarding the student's use of a laptop and other behaviors. Teachers reported that they were consistent in documenting the times he would use the technology and the times the student refused. However, when asked what the district intended to do with this information, the case manager indicated that they did not have a plan for how the data would be used. The case manager said that the computer teacher created graphs with the data and brought them to the IEP team meetings. However, they never got far enough during the IEP team meeting to discuss that information. When asked whether the parent and advocate were given the graphs afterwards, the case manager said no. When asked whether the data transferred with the student to XXXXX, the case manager said no. She said she tried to call the new case manager to make sure he had all of the information he needed; however, she never heard back from him.

25. The XXXXXXXXXX case manager said he understands that the parent would like to see more of a behavior plan in order to get the student to use the laptop. However, the behavior specialist at the IEP team meeting did not feel a behavior incentive plan was necessary. When OCR indicated that the behavior incentive plan was still listed in the IEP and asked whether it was implemented, the case manager indicated that there were informal agreements with each of the student's teachers. In interviews, each of the XXXXXXXXXX teachers reported difficulties in getting the student to use his technology. However, when asked whether a behavior incentive plan was implemented in their class, most teachers reported that the student was not a behavior problem and did not need a behavior incentive plan. Those teachers who did have a behavior incentive plan in place did not appear to link it to use of technology. For example, one teacher indicated that a plan was developed and e-mailed to the parents where there were consequences if the student acted out. However, the student never acted out so the teacher never implemented a behavior plan.
26. The parent also alleged that the student was not allowed to use his iPod to listen to music when there were distractions. However, all teachers reported that the student was allowed to use his iPod any time there was not direct instruction. The case manager at XXXXXXXXXX did indicate that use of an iPod was against school policy and that there were discussions during IEP meetings that the student should not be allowed to use his iPod. However, despite these discussions, all teachers reported that they allowed the student to use his iPod in class.
27. The student's IEP says that a scoring rubric would be provided to the student at the beginning of relevant assignments. Teachers reported that this was provided through a course syllabus at the beginning of the school year and to all students if larger assignments were assigned.
28. The parent also alleged that the student's case managers failed to provide quarterly reports in a timely manner. According to the parent, the district's failure to provide timely quarterly reports had a negative impact on her ability to participate in the IEP process and to monitor the student's progress towards meeting his annual goals.
29. In interviews, one case manager reported that an IEP team meeting fell at the same time progress reports would have been written. However, she was concerned that without the XXXXXXXXXX program, reporting on MAP scores alone would not be an accurate reflection of the student's progress. The

student's math teacher came to the IEP team meeting ready to report on the student's class grades and progress, but according to the case manager, the IEP team never progressed far enough to discuss that information. The case manager could not remember if a quarterly report was ever sent after the IEP team meeting.

30. The other two case managers acknowledged that their quarterly reports were sent late. One case manager said the quarterly report was late because she had never completed one before and needed to check how it was done. OCR asked how the district reported progress on annual goals for special education students. The case manager indicated that progress would be reported at annual IEP team meetings and students would receive the progress reports that go out to nondisabled students. When asked whether those reports would include progress on annual goals, the case manager acknowledged that such quarterly "specialized progress reports" were not always completed. The third case manager acknowledged that his quarterly report for the third quarter was also late. He said that they had been in the process of developing a new IEP for the student, so he wanted to report on progress for the proposed goals. However, the parents wanted progress reported for the May 2012 IEP goals, which were the last agreed upon goals. So, the case manager went back and reported progress on the old goals. That report was approximately 2 months late.

Analysis and Conclusion - Retaliation Issue

Section 504 incorporates the procedural provisions applicable to title VI of the Civil Rights Act of 1964 at 34 CFR 100.7(e). That regulation states that no recipient of federal financial assistance or other individual shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the civil rights laws, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the civil rights regulations. Title II contains a similar prohibition at 28 CFR 35.134, and is interpreted consistently with the Section 504 regulations.

OCR received conflicting reports of what occurred at the November 2nd meeting between the parent and XXXXXX, and OCR was unable to confirm statements attributed to the assistant principal by the parent. IEP team meetings convened after the November 2nd meeting included the parent's advocate and those meetings were not cut short based on her presence. Moreover, the invitation to meet with the special education teacher privately appeared to be a brainstorming idea from the assistant principal to try and resolve conflict rather than for the purpose of intimidation or coercion. Once the parent expressed reservations regarding

meeting, the district immediately discarded the idea and moved forward with a full IEP team meeting. Finally, the evidence indicated that following the IEP team meeting, district staff actually made efforts to improve the IEP's implementation, through more consistent use of Dropbox for example, and that any changes to the student's schedule were initiated by a desire to help the student's focus and attention.

Because the evidence is insufficient to establish that the district intimidated, threatened, coerced, or discriminated against the student's parent for the purpose of interfering with a right or privilege secured by Section 504, OCR is unable to find that the district failed to comply with 34 C.F.R. 104.61 with respect to this issue.

Analysis and Conclusion - FAPE Issue

The Section 504 implementing regulation at 34 CFR 104.33(a) provides that a recipient operating a public elementary or secondary education program or activity shall provide FAPE to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. FAPE is defined in 34 CFR 104.33(b)(2) as the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Section 504. The regulations further state at 34 CFR 104.33(b)(2) that implementation of an Individualized Education Program developed in accordance with the IDEA is one means of meeting the FAPE requirement.

With regard to the allegation that the district denied the student FAPE during the 2012-2013 school year by failing to implement his IEP, OCR has determined that the evidence is sufficient to support a conclusion that the district is not in compliance with the applicable regulations. The evidence showed that assignments and course materials were not consistently e-mailed to the student, that behavior incentive plans were either not fully developed for the student or they were not connected to technology usage as called for in the IEP, and that quarterly "specialized progress reports" were either provided late or not at all. Moreover, staff at XXXXX indicated that "specialized progress reports" were often not provided to other special education students as well.

The district and OCR entered into discussions regarding the compliance concerns identified by OCR during the investigation. The district agreed to take the actions set forth in the enclosed settlement agreement to bring itself into compliance with Section 504 and its implementing regulations. Upon full implementation of the

commitments made in the agreement, the district will be in compliance with respect to the identified concerns. This determination of compliance with Section 504 and the Section 504 regulations is contingent upon the district's implementation of the commitments set forth in the agreement. The district's failure to honor these commitments may result in further action by OCR with respect to the issues raised by the complaint.

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.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, 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.

If you have any questions, please contact Kelli Lydon Medak, the OCR attorney assigned to this complaint. You can contact Ms. Medak at (206) 607-1672 or at kelli.lydon.medak@ed.gov.

Sincerely,

/ s /

Sukien Luu
Supervisory Attorney

Enclosure: Settlement Agreement

cc: Honorable Dale Erquiaga
Superintendent of Public Instruction