



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 6, 2016

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Dr. Kent Kultgen
Superintendent
Helena School District No. 1
55 South Rodney Street
Helena, Montana 59601

Re: Helena School District No. 1
OCR Reference No. 10151101

Dear Superintendent Kultgen:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the referenced complaint against Helena School District No. 1. The complaint alleged that the district discriminated against a student on the basis of disability. Specifically, the complaint alleged that the district failed to provide the student necessary related aids and services when one of the student's teachers failed to implement her Section 504 plan during the 2014-2015 school year.

OCR enforces section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990 and their implementing regulations, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district is a recipient of federal financial assistance from this Department and is a public entity, and is subject to these regulations.

Through its investigation, OCR determined that the evidence supported a conclusion that the district failed to comply with Section 504 and Title II with regard to the issue investigated. OCR's findings of fact and conclusions, set forth below, are based upon information and documents provided by the student's parent and the district. 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. During the 2014-2015 school year, the student attended 12th grade at XXXXXXXX. The student was identified by the school as a student with a disability and had a Section 504 plan in place.
2. The student's Section 504 plan in effect at the beginning of the 2014-2015 school year was comprised of the following provisions:
 - a. font size for assignments must be larger than 10, preferably 14;
 - b. additional time to complete assignments and tests;
 - c. copies of notes from instructor;
 - d. seating at the front of the class;
 - e. when requested, tests read aloud; and
 - f. access to audio books when available, including textbooks.
3. According to the student's parent, during the first semester of the 2014-2015 school year, the student's government class teacher (the teacher) failed to use a font size larger than 10-point for some assignments and failed to provide the student additional time to complete some assignments.
4. The parent provided OCR copies of several assignments from the student's government class which contained type in an approximately 10-point font size. The assignments were from both semesters of the 2014-2015 school year, including one due after the student's Section 504 plan was revised in February 2015. The parent told OCR that when a font size is too small for the student, it causes her to skip letters and lines while reading and makes it very difficult for her to access the content of the writing.
5. The teacher told OCR that he understood the student's Section 504 plan in effect at the beginning of the 2014-2015 school year to require assignments in a font size of "10 or more" and that that provision was revised in February 2015 to require a font size of "12 or more." The teacher told OCR that he frequently created assignments in a 10-point font size in order to fit the assignment on one page. The teacher told OCR that, because he was aware of the student's Section 504 plan, he did not provide the student with assignments in a font size smaller than 10-point, with the possible exception of one assignment. The teacher told OCR that he would have provided the student with assignments in large print if she had asked him to or if he knew she needed it, but she did not ask or appear to need it.
6. On about January 12, 2015, near the end of the first semester of the 2014-2015 school year, the parent informed the assistant principal that she believed the font size on some of the assignments the teacher provided to the student was too small. The assistant principal told OCR she brought the parent's concern to the teacher, and the teacher assured the assistant

principal that he was making the font size for all assignments 10-point or larger. The assistant principal and the teacher both stated to OCR that they believed the student's 504 plan called for a font size of "10-point or larger."

7. The parent's position is that the teacher also failed to implement the student's Section 504 plan provision of "additional time to complete assignments" when he reduced the student's grade on some assignments for turning them in late. The parent told OCR that the student's other teachers at XXXXXX, during the 2013-2014 and 2014-2015 school years, had all given the student until the end of each quarter to turn in her assignments without penalty, and she had expected the teacher to do this also.
8. The student's Section 504 plan in effect at the beginning of the 2014-2015 school year did not limit how much additional time the student would be given. The teacher, the student's Section 504 plan case manager, and the assistant principal told OCR that there was no plan or standard in place regarding the amount of additional time the student would have to complete assignments until a timeframe was added to that provision of her Section 504 plan in February 2015.
9. The case manager told OCR that the school's expectation is that a student and his or her teacher will work out the amount of additional time the student has to complete an assignment when a student's Section 504 plan includes the provision of "additional time to complete assignments."
10. The teacher told OCR that he provided a class syllabus to all his students, including the student, which states that grades for all late work will be reduced by 50%. The teacher told OCR that he would talk with the student about her missing assignments, and he accepted late assignments from the student. However, the teacher did not recall discussing with the student, the parent, or anyone else how much additional time the student would have to complete her assignments without penalty, or whether his late work grading policy would apply to the student's work turned in after the due date.
11. The teacher told OCR that the student missed a lot of school and classwork during the first semester of the 2014-2015 school year and that she submitted numerous assignments after their due dates. The teacher told OCR that, for the student's assignments that were turned in very late, such as by a month or more, he followed his established grading policy of reducing the grade for late work by 50%. The teacher told OCR that he applied this late work reduction to four of the student's assignments, for which the student received 50% of the points available for each of

those assignments, earning a total of 36 out of the possible 72 points for those assignments.

12. On January 22 and February 4, 2015, the school convened a Section 504 plan meeting to revise the student's Section 504 plan. The plan was revised on February 4, 2015, to include the following provisions:
 - a. font size for assignments must be 12 or larger;
 - b. additional time to complete assignments and tests (5 days for assignments & 1 additional class period for tests);
 - c. copies of notes from instructor;
 - d. seating at the front of the class;
 - e. when requested, tests read aloud;
 - f. access to audio books when available, including textbooks;
 - g. reduce visual noise (reduce unnecessary visual content); and
 - h. break down large assignments in smaller increments.
13. The student's Section 504 plan case manager told OCR that after the student's Section 504 plan was revised on February 4, 2015, he showed the revised Section 504 plan to all the student's teachers, including the government teacher. The teacher's position is that he implemented all provisions of the student's revised Section 504 plan after February 4, 2015.
14. The parent's position is that the teacher did not implement all provisions of the revised Section 504 plan after February 4, 2015. The parent told OCR that, after the student's Section 504 plan was revised, the teacher still occasionally gave the student assignments with a font size smaller than 12-point. The parent provided one example for an assignment that was due February 9, 2015, which had a font size smaller than 12-point. The parent told OCR that she did not raise these concerns to the teacher but instead asked another of the student's teachers to enlarge the font on those assignments.
15. With respect to the provision of font size, the teacher told OCR that during second semester, following the revisions to the student's Section 504 plan, he made sure the student received assignments in a 12-point or 14-point font. The teacher told OCR that he was not made aware of any concerns with the size of the type used on the student's assignments during second semester.
16. The teacher provided OCR a copy of a few second semester assignments as they were provided to the class, most of which were in a 12-point font, but one of which, a "Mock Congress Reflection" assignment, was in a 10-point Times New Roman font.

17. The parent also asserted that the teacher failed to provide the student additional time to complete some assignments and, after February 4, 2015, the teacher did not break down larger assignments into smaller components, including the end-of-year senior project assignments. Additionally, the parent told OCR that instead of breaking down larger assignments the student missed following an extended excused absence in February 2015, the teacher instead provided an unorganized stack of missed assignments and unattached sticky notes without any explanation of the instructions or requirements for each of the missed assignments. The parent stated that it took her and the student a week to go through the pile of work and try to match the sticky notes with the assignments and that, even then, neither she nor the student could figure out three assignments. The parent stated that, when the teacher was asked about those three assignments, he told the parent “just don’t worry about those three.”
18. With respect to the provisions of breaking down large assignments and allowing additional time to complete assignments, the teacher told OCR that, following the student’s extended absence in February 2015, he provided her with the assignments she had missed along with sticky notes identifying what the assignments were. The teacher told OCR that each assignment included the instructions for completing the assignment that were provided to all students, and he provided no additional explanation of the assignments to the student. The teacher told OCR that the larger projects for his class, including the senior project, are broken down into smaller components for all students, so he did not make any individual modifications for the student.
19. The parent’s position is that the teacher did not provide the student with additional time to complete the senior project. She told OCR that the teacher did not extend the final due date for completion of the project for the student or provide her additional time for completion of interim steps, such as completion of rough drafts for peer and teacher review.
20. The senior project was comprised of a research paper and a proposed bill for a mock congress, with due dates at multiple interim steps. The project carried considerable weight in students’ government class grades. An e-mail was sent to all students’ parents detailing the deadlines for completing the project, including a first draft for peer review due on May 5, and a second draft due to the teacher on May 7, 2015.
21. On May 5, 2015, the day the draft for peer review was due, the parent sent the teacher an e-mail in which she stated “[the student] is not done with her first draft. She needs about two more paragraphs. I see the peer edit is

today. What type of accommodations are we making for [the student] with her 504? I know she gets 5 extra days to complete tasks but how will that work with a peer edit? Is there an accommodation for that part?" The teacher did not reply to the parent's e-mail. On May 8, 2015, the parent sent a follow-up e-mail to the teacher and stated, in relevant part, "I have not had a response on this to date." On May 9, 2015, the teacher responded to the parent's e-mail, stating "... I did not respond because [the student] turned in her first draft for peer review. The paper was on time and reviewed by one of her peers." The teacher's e-mail reiterated the same project due dates identified for all students and did not address the parent's question regarding how to provide the student with 5 extra days to complete this senior project assignment.

22. The teacher told OCR that the parent sent him an e-mail in which she stated she was concerned about the rough draft of the student's senior project paper being late. The teacher told OCR he did not respond to the parent's e-mail because the student turned the assignment in on the due date and received a passing grade of 76%. The teacher told OCR that the student's grades indicated she did not need additional time to complete the assignments related to the senior project and, because she submitted each assignment on time, he did not provide additional time for her to complete those assignments.
23. The student received grades ranging from "As" to "Fs" on her homework, projects, quizzes, and exams in her government class. The student's final grades for the class were a "D" for first semester and a "C" for second semester.

Analysis and Conclusion

The issue OCR investigated is whether the district failed to provide a free appropriate public education to a qualified student with a disability by failing to provide necessary related aids and services to the student during the 2014-2015 school year in violation of Section 504 at 34 C.F.R. 104.33 and Title II at 28 C.F.R. 35.130.

The regulation implementing Section 504 at 34 C.F.R. 104.33 states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified disabled person in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of disabled persons as adequately

as the needs of nondisabled persons are met. The regulations implementing Title II at 28 C.F.R. 35.130(b)(1)(ii) and (iii) are comparable to the Section 504 regulations.

OCR found that the student had a Section 504 plan in place during the 2014-2015 school year. The student's Section 504 plan in effect at the beginning of the 2014-2015 school year included the following provisions: "Font size for assignments must be larger than 10, preferably 14" and "Additional time to complete assignments and tests."

With respect to the allegation that the student was not provided with assignments in an appropriate font size, the evidence established that the student's Section 504 plan at the beginning of the school year required a font size greater than 10-point, and the revised Section 504 plan in February 2015 required a font size of 12-point or greater. OCR found that the teacher provided the student multiple assignments in a 10-point font size. Additionally, the parent raised concerns that, even after the Section 504 plan was revised in February 2015, the student still occasionally received assignments in a font size that was too small for her. At least two assignments provided to the student during second semester were in a font size that was not 12-point or larger. Therefore, the evidence established that the district failed to implement the provision of the student's Section 504 plan regarding font size.

With respect to the allegation that the student was not provided with additional time to complete assignments in her government class, the evidence established that between September 2014 and February 4, 2015, the student's Section 504 plan contained a general provision that the student would be provided "additional time to complete assignments and tests." The student's Section 504 plan did not contain a limit on how much additional time the student would be given to complete her assignments and tests, nor did the plan specify how the process for requesting and/or obtaining additional time would be implemented. In addition, OCR found that neither the student's government class teacher nor any other staff member discussed expectations with the student or parent regarding this provision of the student's Section 504 plan in her government class prior to February 4, 2015.

OCR further found that the teacher reduced the student's grade by 50%, in accordance with his standard grading policy for all students, on assignments the student turned in late by about one month or more. The student and the parent were not told that this reduction would be made until after the student handed in the assignments. Additionally, between February 2015 and the end of the 2014-2015 school year, the evidence established that the teacher did not provide additional time for the student to complete assignments related to the

senior project. OCR found that because the student's Section 504 plan lacked specificity with respect to granting additional time to complete assignments prior to February 2015, there were several instances in which the student's grades on assignments may have been adversely affected. In addition, the evidence established after the student's Section 504 plan was modified to include a more defined timeframe to complete assignments, the district failed to provide the student with extra time to complete the senior project. For these reasons, OCR concludes that the district failed to comply with Section 504 by not consistently providing the student with necessary related aids and services that were identified to meet her individual educational needs.

With respect to the allegation that the student was not provided assistance from the teacher in the form of breaking large assignments into smaller increments, the evidence established that this provision was not added to the student's Section 504 plan until February 4, 2015. After that date, the teacher indicated that he took no actions to provide this related service to the student because all large assignments in his class were broken down into increments for all students, including the senior project, which was broken down to require multiple drafts for review and revision. The evidence also established that the teacher did not break down the student's senior project when additional assistance was requested by the student's parent.

The evidence shows that the teacher failed to consider whether the student needed the assignments broken down in a manner different from nondisabled students. Instead, he provided the assignments to the student in the same manner they were provided to all other students without consideration of the student's individual needs. Therefore, the evidence established that the district failed to implement the provision of the student's Section 504 plan regarding breaking down large assignments into smaller increments.

Based on the above information, the district failed to implement the student's Section 504 plan regarding breaking larger assignments into smaller components, font size, and additional time to complete assignments. Therefore, OCR has determined that the evidence supports a conclusion that the district failed to comply with Section 504 and Title II.

The district and OCR entered into discussions regarding the compliance concern identified by OCR during the investigation. The district has signed the enclosed settlement agreement, which, when fully implemented, will remedy the violations of Section 504 and Title II identified by OCR. Under this agreement, the district agrees to develop policies and procedures to ensure that a student's Section 504 plan is implemented, including ensuring that all relevant staff members are aware of the provisions of a student's Section 504 plan and understand how they will implement the plan, and to publish and train staff on the revised policies and procedures.

Additionally, the agreement requires the district to correct the student's grades in her government class by removing the point deductions that were assessed to some assignments because they were turned in late, re-calculating the student's semester and year-end grades, and providing amended official transcripts to the student and to all post-secondary institutions that have requested the student's transcript to date. OCR will monitor the district's implementation of the agreement.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the district's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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.

This concludes OCR's investigation of the complaint. 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.

OCR appreciates the district's cooperation throughout the investigation and resolution of this complaint. If you have any questions, please contact Emily Hazen, equal opportunity specialist, by telephone at 206-607-1615 or by e-mail at emily.hazen@ed.gov.

Sincerely,

/ s /

Kelli Lydon Medak
Supervisory Attorney

Enclosure: Settlement Agreement

cc: Denise Juneau, Superintendent, Montana Office of Public Instruction
District Counsel