



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

December 22, 2015

Dr. Ramona Bishop
Superintendent
Vallejo City Unified School District
665 Walnut Avenue
Vallejo, California 94592-1177

(In reply, please refer to case no. 09-15-1421.)

Dear Superintendent Bishop:

On July 17, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), notified you of a complaint against the Vallejo City Unified School District (District). The Complainant alleged discrimination on the basis of disability regarding a Student.¹ The specific issues that OCR investigated were:

1. Whether the District failed to provide the Student, a dependent of the court, with a free, appropriate public education (FAPE) by:
 - a. failing to follow adequate procedures for evaluation and placement of the Student; and,
 - b. disciplining the Student without following adequate evaluation and placement procedures.

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds and is subject to the requirements of Section 504, Title II, and their respective regulations.

To investigate this complaint, OCR reviewed documents and other information provided by the Complainant, the Student's Education Rights Holder (ERH) and the District, and

¹ OCR informed the District of the identities of the Complainant and Student in our letter notifying it of the complaint. We are withholding them here 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.

interviewed the Complainant and the ERH. After careful review of the information gathered in the investigation, we concluded that there was sufficient evidence to support a finding of noncompliance. The applicable legal standards, facts, and the reasons for our determinations are summarized below.

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 non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) regulations require 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. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. 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 act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a disabled student from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such

a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

- At the start of the 2014-2015 school year, the Student was in the eighth grade at a District middle school. The Student had an IEP from a different district in effect at the time he started in the District dated April 25, 2014. His disability eligibility is Specific Learning Disability (SLD).
- On March 6, 2015, the Student entered XXXXXX Middle School (School) in the District because his foster parent requested a change in school placement. Up to this point in the school year, the Student had been removed from school for a total of four days.
- On March 25, 2015, the Student's ERH emailed the District's Special Education Program Specialist that an annual IEP for the Student was due on April 25, 2015, and requested that it be scheduled.
- On April 6, 2015, the Program Specialist notified the ERH that the Student had changed schools and introduced the Student's Case Manager at the School and the School Psychologist.
- On April 12th and 14th, the ERH followed up with the Case Manager, School Psychologist, and Program Specialist to coordinate the annual IEP meeting, and shared her opinion that a manifestation determination meeting should take place since the Student was nearing over 10 days of suspension. At this time, the Student had been suspended for five days during the school year.
- On April 14, 2015, the School Psychologist sent emails to the ERH, and the Case Manager and Program Specialist asking about their availability the week of April 20, 2015. In her email to the ERH, the School Psychologist noted that the Student was exhibiting a pattern of behavior of walking out of class without permission as well as disruptive behavior, and that they could "discuss these behaviors and supports that need to be in place" at the IEP meeting.
- On April 21, 2015, the School Psychologist emailed the Case Manager and Program Specialist again requesting a response, noting that the District "will be late already" with the Annual IEP. The Case Manager responded the same day but the Program Specialist did not respond. The same day, the Student was suspended an additional three days for a total of eight days during the school year.

- On April 28, 2015, the School Psychologist emailed the ERH, Case Manager, and Program Specialist asking the Program Specialist for her availability on May 14th, 15th and 21st. The ERH responded that she was only available on May 21st. The Program Specialist responded she was available on that date.
- On May 1, 2015, the Student was suspended for five days and referred for expulsion. On May 4, 2015, two days into this suspension, the Student reached 10 days of suspension for the school year.
- On May 6, 2015, the School contacted the School Psychologist and Case Manager to schedule a manifestation determination meeting. The same day, the School Psychologist contacted the Program Specialist and ERH requesting an earlier meeting date for the annual IEP in light of the need to schedule a manifestation determination meeting. She provided May 12th, 14th and 15th as possible meeting dates. On May 7, 2015, the ERH emailed that she was available on May 15th. The School Psychologist and Program Specialist confirmed they were also available on that date.
- On May 11, 2015, the School Psychologist emailed the IEP team, noting that because the Case Manager was not available on May 15th, the manifestation determination meeting could take place on May 21, 2015, when the annual IEP was scheduled. The School Psychologist noted that the District was beyond the 10 day timeline for the manifestation determination meeting, but that this was the earliest date for all the team members to be present. At this point, the Student had been suspended for a total of 14 days during the school year.
- On a separate email chain, the School Psychologist emailed the Program Specialist asking if a special education interim placement was appropriate for the Student since he had been out of school for over 10 days. The Program Specialist did not reply to the School Psychologist regarding an interim placement for the Student.
- On May 14, 2015, the District's Special Education Director emailed the Program Specialist, ERH, Case Manager, and School Principal explaining that the earliest availability for all the team members was May 21st, and that he would see if the Student could receive one hour of home instruction for three days leading up to the manifestation determination meeting.
- On May 19, 2015, the Teacher that was to provide home instruction emailed the ERH stating that he had problems getting her contact information and the earliest he could work with the Student would be May 20th. The ERH responded that this was too late since it would only be one day of instruction prior to the May 21st manifestation determination and annual IEP meeting. On May 21st, the Student had been suspended 22 days during the school year.

- The annual IEP and manifestation determination meeting took place on May 21, 2015. The team first addressed the manifestation determination. The team decided that the student's behavior was not a manifestation of his disability: SLD. While the meeting notes state that it was "debatable" that the behavior was a result of a failure to implement the IEP, the ERH stated that the team agreed that it was a result of a failure to implement the IEP and she provided a copy of the document with her initials to OCR. Regardless of the manifestation determination questions, however, the expulsion referral was ultimately withdrawn because the ERH agreed that the Student would complete the school year with home instruction and enter a comprehensive high school for his ninth grade year.
- The annual IEP continued to identify the Student's disability as SLD. As a result of the Student's behavior, Social Emotional/Behavior, Self-Responsibility, and Compliance goals were added to the IEP. The IEP also included a Behavior Intervention Plan (BIP) to address the Student's behavior.
- On the same day as the meeting, the Teacher emailed the ERH to state that he would work with the Student starting May 26th until the end of the school year (June 11, 2015), and maybe some additional hours to make up for the time the Student was out of school due to suspension. The ERH emailed the Teacher, Program Specialist and Director of Special Education to confirm that the Teacher would work additional hours past the end of the school year.
- The District's records show that the Teacher met with the Student for one hour per day from May 26th–June 1st. The ERH stated that as far as she knows instruction was only provided until June 11, 2015. The District did not provide any other documentation regarding the Teacher providing instruction to the Student beyond June 11th.
- Over the summer, the Student moved out of the District and he started the ninth grade in a different school district.

Under Section 504, the District must provide the Student a FAPE. One way the District may do this is through the development of an IEP as consistent with IDEA procedures. The IEP team must meet periodically to determine whether the annual goals for the Student are being achieved and to revise the IEP to address the child's anticipated needs. Additionally, Section 504 and Title II require that if a student is removed for more than 10 school days in a school year, a manifestation determination meeting must take place. After a student is removed for 10 days, the student must also continue to receive appropriate educational services.

In this case, the District failed to hold the annual IEP meeting in a timely manner. The evidence showed that the District staff failed to schedule the annual IEP prior to April 25, 2015, even though the ERH contacted them a month before to do so. In particular, the Program Specialist failed to respond to repeated inquiries about her schedule from the School Psychologist and ERH until April 28, 2015. As demonstrated by emails from

ERH and the School Psychologist when attempting to schedule the annual IEP, there was urgency to hold an IEP meeting in order to add behavioral goals and develop a BIP to address the Student's behavior. The School Psychologist specifically identified this need in an April 14th email.

Additionally, the District failed to hold the manifestation determination meeting before the Student was suspended for 10 days out of the school year. The School did not contact the District about the Student's referral for expulsion until the Student had been removed for a total of 12 days during the school year. As a result, all the dates that the District provided to the ERH to hold the manifestation determination were already untimely. That the ERH was not available on the alternate dates provided by the School Psychologist does not excuse the District from holding the manifestation determination no later than the tenth day of the Student's removal. Furthermore, the District appeared unaware of the requirement to provide the Student with an interim alternative education placement until four school days prior to the manifestation determination meeting. As a result, the District failed to provide the Student any educational services for 12 days, from May 5th (the 10th day of his removal) until May 21, 2015 (the date of the manifestation determination meeting).

Therefore, on both issues, OCR determined that the District is in violation of Section 504 and Title II.

On December 17, 2015, the District, without admitting to any violation of law, agreed to implement corrective actions and signed an agreement that, when fully implemented, will resolve the issues in the complaint. A copy of the signed agreement is attached. OCR will monitor the District's implementation of the Resolution Agreement.

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. OCR is closing this complaint as of the date of this letter, and notifying the Complainant simultaneously.

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 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.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact OCR Attorney Alvaro Soria, at (415) 486-5580.

Sincerely,
/s/

Anamaria Loya
Team Leader

Enclosures

Cc: XXXXX XXXXXXXXXXXXXXXXXXXX, Counsel (by email only)