



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

June 23, 2016

Ms. Cindy Uptain  
Superintendent  
Placer Hills Union Elementary School District  
16801 Placer Hills Road  
Meadow Vista, CA 95722

(In reply, please refer to case no. 09-16-1014.)

Dear Superintendent Uptain:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Placer Hills Union School District (District). The Complainant alleged that the District discriminated against her son (Student) on the basis of disability.<sup>1</sup> Specifically, OCR investigated the following allegations:

1. Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to evaluate the Student in a timely manner even though it had reason to believe that the Student needed special education or related services because of a disability.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. Section 504 prohibits discrimination on the basis of disability 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, as amended, and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the regulations.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the District, and by interviewing the Complainant. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issues investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant and Student. We are not including their names in this letter for privacy reasons.

### Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. 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) 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 in a timely manner. 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.

### Factual Background

- The Student was an XXX grader at a middle school in the District (School). He was identified as a Student with a hearing impairment and a specific learning disability and had been served under an IEP from XXXXXX grade through XXXXXX grade.
- At the Student's November 2014 IEP meeting, the IEP team agreed on an Assessment Plan regarding his continued eligibility for special education services. The Complainant consented to the assessment plan except as to one aspect of the Plan.
- After the agreed-upon assessments were completed, in February 2015 the District sent the Complainant prior written notice that the District was considering exiting the student from special education at the February XX, 2015 IEP meeting. Based on the facts provided to OCR to date, it is unclear whether adequate

notice of procedural safeguards was provided to the Complainant at or before the February XX, 2015 IEP meeting.

- On March XX, 2015, the Student's Occupational Therapist sent an email to the Complainant noting that the Student had not attended the past few weeks of occupational therapy services and asking whether the Complainant intended to keep sending her son to occupational therapy services until the IEP was finalized. That same day, the Complainant emailed the Principal stating that she was confused about the status of the IEP and asking for a meeting.
- On April XX, 2015, the District provided the Complainant with a copy of the completed IEP. That document stated that the Student "no longer continues to be eligible for special education services...his educational needs can be met within the general education program...District and parents will determine if a 504 plan would be appropriate for [Student] to address accommodations for handwriting, preferential seating, and closed captioning, when available."
- On April XX, 2015, the Principal emailed the Complainant stating that if the Complainant wished, she could arrange a meeting with a program specialist from the Placer County Office of Education to discuss Section 504 plans.
- On May X, 2015, the Complainant signed the IEP with a note stating that she did not consent to exiting the Student from special education, except for ending occupational therapy services.
- A June X, 2015 email exchange between the Principal and Student's teachers contained several references to the Student's "plan" enabling him to have scribing services, suggesting that at least some school staff believed that the Student's IEP was still in place.
- On June X, 2015, the Principal emailed the Complainant asking whether the Complainant was pursuing the Section 504 plan. Complainant responded that she previously told Principal that she was interested in the Section 504 plan and had been waiting for someone to contact her. The Principal responded stating that she was waiting for Complainant to provide the diagnosis of disability.
- On approximately September X, 2015, the School's new Vice Principal met with the Complainant. The Vice Principal and the Complainant met again on September XX, 2015. The Vice Principal told the Complainant at each of these two meetings that the School needed to observe the Student and review his records.
- On October X, 2015, the Complainant sent a letter to the School again requesting a Section 504 plan. The Complainant then filed a complaint with OCR on October XX, 2015. A follow up meeting was held on October XX, 2015. After that meeting, the District sent the Complainant an email requesting feedback on

proposed accommodations. A Section 504 team meeting was held on November XX, 2015; the Complainant signed the Section 504 plan on November XX, 2015. The documents provided by the District do not include a notice of procedural safeguards for the Complainant related to the Section 504 evaluation process.

### Analysis and Resolution

OCR found that the District recommended that the Student be exited from special education and identified the need to potentially pursue a Section 504 plan in spring 2015. Whether the IEP continued to be implemented in whole or in part after the Complainant objected to the IEP and during the period of time before a Section 504 plan was executed is in dispute. The facts gathered to date suggest that some of the services were provided. OCR also found that the Section 504 evaluation process did not begin until September 2015, and a Section 504 plan was not in place until November XX, 2015. The communication from the Principal raised concerns for OCR because it suggested that the Principal believed that the Complainant was responsible for providing an evaluation and “diagnosis of disability,” when the responsibility for conducting an initial evaluation under Section 504 and the regulations lies with the District. The documents provided from the District did not include any evidence that the Complainant was provided with written notice of her procedural safeguards, either at the IEP meeting where the District proposed to exit the Student or during the Section 504 process.

The investigation to date thus raised concerns for OCR that, upon exiting the Student from special education, the District did not appropriately and timely evaluate the Student for a Section 504 plan. OCR also had concerns about whether the Complainant was provided adequate notice of procedural safeguards, including the right to a hearing, when the Student was exited from Special Education and when his Section 504 plan was created. However, pursuant to Section 302 of the OCR’s Case Processing Manual, prior to the conclusion of and to address the concerns raised in OCR’s investigation of the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement, which is aligned with the complaint allegation and the information obtained by OCR during its investigation. As part of that resolution agreement, the District agreed to provide compensatory or remedial services at no cost to the Student due to any failure to provide appropriate services from February XX, 2015 to November XX, 2015. The District also agreed to issue written guidance and provide training to District staff concerning the District’s responsibility to ensure the provision of a free appropriate public education (FAPE) to students with disabilities under IDEA and Section 504, including the responsibility to ensure that students are located, identified, and evaluated for services in a timely manner.

### Conclusion

Based on the commitments made in the enclosed resolution 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 resolution agreement is

intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the statutes and regulations at issue in the case, in particular 34 C.F.R. §§104.33-36, and 28 C.F.R. §§ 35.103(a) and 35.130.

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 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Blake Thompson, Civil Rights Attorney, at (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat  
Team Leader