



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

January 19, 2023

VIA ELECTRONIC MAIL

Anne Zachry, CEO
KPS4Parents
2390-C Las Posas Rd. #482
Camarillo, California 93010
azachry@kps4parents.org

(Re: OCR Complaint No. 09-21-1113.)

Dear Ms. Zachry:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Oxnard Union High School District (District). The complaint alleged discrimination based on disability. OCR opened an investigation of the following issue:

Whether the District denied the Student a free, appropriate public education (FAPE) during virtual learning by not providing her the 1:1 paraeducator support required by her individualized education program (IEP) without making an individualized determination that she did not need such support in this educational setting.

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

OCR investigated this complaint by interviewing you and reviewing extensive documentation and other information provided by you (the Advocate) and the District. Based on the evidence obtained, OCR found that the District denied the Student a FAPE because it: a) failed to provide the Student with the 1:1 paraeducator support required by her IEP during virtual learning based on considerations other than her individual educational needs; b) failed to conduct an evaluation prior to making this significant change in the Student's placement in spring 2020; and c) failed to

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

reevaluate whether her reduced paraeducator services during virtual learning were appropriate and designed to meet her individual educational needs despite repeated notice from the Student's parent between April and December 2020 that the services were inadequate because the Student was struggling and needed more support. OCR further found that the District failed to remedy this denial of FAPE by not considering her need for compensatory services. Pursuant to Section 303(b) of OCR's Case Processing Manual (CPM), the District agreed to remedy these violations in the enclosed voluntary Resolution Agreement.

In addition, OCR has a compliance concern that the District may have treated other students with disabilities on IEPs in the same way that it treated the Student by reducing the services required by their IEPs based on considerations other than their individual educational needs and without conducting evaluations prior to making these significant changes in placement. Prior to OCR completing its investigation, the District agreed to resolve this compliance concern through the enclosed Resolution Agreement under Section 302 of OCR's CPM.

The legal standards, findings of fact, and the reasons for OCR's determinations are summarized below.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires recipient 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 34 C.F.R. §§ 104.34-36. *See* 34 C.F.R. § 104.33(b)(1). Districts are required to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. 34 C.F.R. § 104.35(a). Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. § 104.33(b)(2). Because Title II provides no less protection than Section 504, generally violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

In interpreting evaluation data and in making placement decisions, a recipient school district must draw upon information from a variety of sources, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and ensure that the decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 104.35(c).

The Section 504 regulation, at 34 C.F.R. § 104.6(a), provides that when OCR finds that a recipient school district has discriminated against an individual on the basis of disability, the district shall take such remedial action as OCR deems necessary to overcome the effects of the discrimination. Compensatory services are required to remedy any educational or other deficits that result from

a student with a disability not receiving the special education and related aids and services to which they were entitled.

Findings of Fact

The Student is an individual with a disability, autism, who was enrolled in a special education class offering a functional skills curriculum (special education class) at a District high school (School) during the 2019-20 school year. The Advocate reported to OCR that the Student has significant behavioral challenges due to her autism.

The Student's IEP dated January 10, 2020, continued her placement in the special education class and required, among other special education and related aids and services, provision of full-time 1:1 paraeducator support throughout the school day. During this meeting the team discussed that the Student had been making positive behavioral progress. The Student's Educational Progress Report, dated February 7, 2020, indicated that she was making progress on three of her IEP goals, making good progress on one goal and great progress on three goals.

There was another IEP meeting for the Student on March 3, 2020, which again placed her in the special education class with full-time 1:1 paraeducator support throughout the school day. The IEP noted that the Student had struggled with "severe behavior" but stated that "[o]ver the course of the year she has made significant progress utilizing appropriate communications and coping strategies" and that "she needs to maintain these strategies to continue to access the community and the curriculum." According to the Student's Progress Report dated March 3, 2020, one IEP goal had been recently introduced, she was making progress on two goals, and she had attained two goals.

Due to the COVID-19 pandemic, the District stopped providing on-campus educational services to all students on March 13, 2020. Virtual learning services began for all students in the District on March 16, 2020.

On March 23, 2020, an Interim Special Education Director sent a letter to all parents and guardians of students with disabilities on IEPs. The letter stated that the District would be unable to provide the exact services written in each student's IEP because of health and safety reasons during the school closure. The letter further stated that the District had developed a contingency plan for each student to receive some special education and related services, to the extent possible and feasible during the school closure, and that the student's case manager would provide the parent/guardian with a copy of the contingency plan. The letter asserted that the District was not changing the student's IEP and noted that the student would receive the placement and related services written in his or her IEP when it was safe to return to school.

The Student's Education Contingency Plan, dated April 5, 2020, stated that: "This Contingency Plan is based on the individual needs of the student, including their current Annual Review IEP. Please know, distance learning is not a minute-for-minute replacement of the regular school day when schools are open. Rather it is an abbreviated and adjusted schedule to reflect the realities of the emergency circumstances of COVID-19." This Plan outlined various virtual services but did

not include any reference to provision of 1:1 paraeducator support. The District did not conduct an evaluation of the Student prior to implementing her Plan.

On April 9, 2020, the Student's mother emailed the Student's 2019-20 Special Education Teacher/Case Manager (2019-20 Case Manager) and reported that the Student was struggling with virtual learning, including behaviorally.

On May 15, 2020, there was an IEP meeting for the Student as an addendum to the March 3, 2020 IEP. The IEP addendum noted that the Student's mother and the Advocate stated that the Student was experiencing serious behavioral challenges during virtual learning and her participation was declining. The Advocate reported that the Student had "regressed significantly" since the school closure started. Even though the Student was still participating in a virtual learning program, the District's offer of FAPE in the May 15, 2020 IEP was again placement in the special education class at the School, with various supports and services, including 1:1 paraeducator support throughout the school day. The Student's virtual learning program continued without provision of the 1:1 paraeducator support required by her IEP. The IEP team did not discuss or consider whether the Student needed compensatory services because she was not receiving this 1:1 paraeducator support.

On May 26 and 27, 2020, the Student's mother and Advocate provided the District with written comments on the IEP. The comments stated that the parent notice issued by the Interim Special Education Director on March 23, 2020, had not been individualized to the Student and did not describe in sufficient detail how the District proposed to change her services. The comments indicated that the lack of appropriate virtual learning options for the Student during the COVID-19 school closure was leading to significant behavioral regression and leaving her insufficient time to make meaningful progress towards her goals before December 2020 when she would otherwise "age out" of special education. The comments included a request that the Student receive behavior intervention support from a non-public agency for the remainder of her special education career, including an additional calendar year beyond the date that she would otherwise "age out."

The Student's Progress Report, sent to the parents on June 16, 2020, stated that for nine of her IEP goals there was not sufficient information to determine progress due to the school closure. For three goals, the Report said that the skill had been recently introduced in the IEP of May 15, 2020, and that "school closure affected progress."

In an undated letter to parents of students with disabilities on extended school year (ESY) services in summer 2020, the Director of Special Education advised that virtual learning would extend at least through the duration of the 2020 ESY and that, as a result, the District would not be able to provide the exact services written in students' IEPs. The letter attached a contingency plan of the services the District would provide to the Student during 2020 ESY. The Student's ESY contingency plan did not provide for the 1:1 paraeducator support required by her May 15, 2020 IEP. Instead, the Student's ESY contingency plan provided only four hours a day, for five days a week, of small group/direct SAI/Functional Skills instruction/support by a teacher and/or para-

educator through an online instructional platform and/or packets based on individualized needs, and “designated services (speech, OT [occupational therapy], etc.) at levels set for ESY in the IEP.”

On August 3, 2020, the Advocate sent the Director of Special Education a letter requesting an IEP meeting and the District’s response to the requests contained in the parents’ May 2020 comments on the last IEP document.

On August 11, 2020, the Director of Special Education sent a letter to parents and guardians of students with disabilities concerning instruction for the 2020-21 school year, which would commence on August 26, 2020. The letter stated that, based on state and local public health criteria, the District was not permitted to reopen for in-person instruction and would be providing instruction to all students through a virtual learning model. The letter also noted that virtual implementation of each student’s IEP may vary from IEP implementation during in-person instruction at a school site. The letter explained that each student’s case manager would be contacting their parent or guardian to discuss a “Distance Learning Plan” that would describe how the IEP would be implemented under this virtual instructional model and offered to convene an IEP meeting at the request of the parent or guardian.

By letter dated September 3, 2020, the Director of Special Education responded to the letter from the Advocate dated August 3, 2020. The Director’s letter stated that the Advocate had asked the District to extend the Student’s eligibility for special education and related services for one calendar year based, in part, on “assertions” that the District failed to provide her with appropriate instruction during the period of school closure at the end of the 2019-2020 school year. The Director denied that the instruction provided during the school closure was inappropriate, “given what was possible and practicable during that time.” She said that the maximum age of eligibility for special education and related services was determined by state law and nothing in California law requires the District to provide a FAPE to a student who has exceeded that age. The Director acknowledged that an administrative law judge could award compensatory services to a student “aging out” of eligibility but only based on a finding of a denial of a FAPE during the period of the student’s eligibility. She said that the District “contends that it has offered and provided [the Student] with a FAPE at all times and denies that any compensatory education is warranted.”

The Student had two Distance Learning Plans dated September 4, 2020, which stated that she would receive daily virtual paraeducator support, noting that the: “para will attend instructional google meets, monitor/assist with assigned activities/assignments, collect data, and support students in small groups.” The Plan did not provide that the Student would receive the 1:1 paraeducator support throughout the school day required by her IEP.

There was an IEP meeting for the Student on September 18, 2020. Her documented placement continued to be the special education class at the School, with 1:1 paraeducator support throughout the school day, even though she continued in a virtual learning program. The IEP included a section called “Emergency Conditions Provisions” which stated that: “If instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than

10 school days due to emergency conditions, the IEP will be provided by means of 'distance learning' to the extent feasible, as determined by your child's teachers, in light of the emergency circumstances at that time. This applies to the special education and related services in the IEP, including post-secondary transition services, extended school year services, and supplementary aids and services. These provisions do not constitute a change to the District's offer of FAPE." The Advocate later responded with a "note" to the IEP requesting in-home behavioral support services during future emergency conditions requiring virtual learning.

The IEP narrative notes to the September 18, 2020, IEP stated that the Student's mother expressed concern that the Student's IEP goals were not being addressed and that she had regressed during virtual learning. According to those notes, the Student's mother felt that the Student "does not benefit from instruction without a behavioral aide," and "[r]equested a 1:1 [paraeducator support] to be with her and [for the] district [to] provide in home supports." The notes stated that the Student's 2020-21 Special Education Teacher/Case Manager (2020-21 Case Manager) "shared that many students rel[ied] on parent support during" virtual learning and online activities. According to the notes, the Student's mother inquired about in-person instruction, District team members stated that the District was moving toward forming in-person cohorts "as conditions permit," and that "[t]he District will consider request for 1-1 in home support" as it moved toward in-person cohorts.

According to the audiotape of the IEP meeting on September 18, 2020, the Student's mother said that the Student was experiencing behavioral challenges during virtual learning that were preventing her from participating and understanding the material. She said that the Student needed in-person support throughout the school day. The 2020-21 Case Manager acknowledged that the Student's mother had been providing in-person behavioral support to the Student. The Student's mother stated that she was not a special education teacher and she "did not think that she could do it." The Advocate said that the Student's "outburst behaviors" had escalated in the home setting, were all centered around virtual instruction, and were "greater than what a parent can accommodate." The Advocate again requested 1:1 paraeducator support for the Student at home until in-person instruction resumed. The Advocate stated that a major concern was that the Student was going to "age out" in December 2020, that she had "regressed significantly" during virtual learning, and that she was not progressing on her IEP goals.

On September 24, 2020, the Student's mother and Advocate provided the District written comments on the IEP dated September 18, 2020. One comment stated that the Student did not benefit from instruction without 1:1 in-person paraeducator support and had regressed during the school shutdown in the absence of such support. On September 25, 2020, the Advocate sent a letter to the Director of Special Education requesting behavioral interventions and supports that would facilitate the Student's participation in virtual learning. The Advocate stated that without such intervention the Student continued to regress and accumulate more "compensatory education claims." The Advocate said that the District was on notice of the Student's continued behavioral regression and inability to benefit from instruction in the absence of appropriate behavioral interventions during virtual instructional time.

On September 28, 2020, the 2020-21 Case Manager emailed the Student's mother a list of ways to support the Student during Google Meets using positive reinforcement. The Case Manager stated that, unfortunately, she had to bring attention to incidents that had occurred within the last week "that are less conducive to the agreed upon support" and did not provide a positive learning environment based on positive modeling practices. The 2020-21 Case Manager then outlined the Student's mother's response to specific behavioral incidents during virtual learning and stated that such approach "could be oppositional to the positive support that they all agreed would help the Student" and "can compromise her dignity." The Case Manager stated that she understood the mother's intention was to support the Student in the best way possible and asked her to provide that support in a positive manner.

On September 30, 2020, the Student's mother emailed the 2020-21 Case Manager that the Student was no longer going to participate in several types of Google Meets until further notice. The Student's mother stated that the Advocate would be writing the District.

On October 1, 2020, the Advocate wrote the Director of Special Education a letter stating that the Student's mother was withdrawing the Student from most of the online instruction offered at that time because of the deleterious effects the sessions were having on the Student's access to and ability to benefit from the instruction, as well as her emotional well-being. The Advocate's letter stated that attempting to participate in the instruction without adequate in-person behavioral supports from highly trained, qualified staff was causing the Student to regress behaviorally, regularly having "outburst behaviors," and that she was failing to benefit from the instruction as a result. The Advocate's letter further stated that the Student's mother was trying to serve as a behavioral aide because the District was not providing the Student with the highly trained and qualified personnel called for in her IEP. In addition, the letter stated that the Student was not receiving FAPE and that the last and most serious outburst situation was "the last straw." The letter explained that because the District was not providing the Student in-person behavioral support, the Student's mother had responded to the Student's recent behavioral outburst in the only way the mother knew how. The Advocate requested immediate action to address the Student's continuing unmet needs and make virtual learning work for her.

On October 23, 2020, the District sent the Student's mother an Education Progress Report outlining the Student's progress on her IEP goals. For six goals, the Report stated that there were limited opportunities to practice the skill and/or accurately measure progress due to virtual learning. For two goals, the Student was making progress. For three goals, the Student's progress was affected by absences.

On November 13, 2020, there was an "Exit Summary" meeting for the Student. The Exit Summary document included summaries of the Student's academic achievement and functional skills; these summaries were all dated March 2020 when she had been participating in in-person learning. The Exit Summary included recommendations that may assist the Student to meet her goals in adult life through the California Department of Rehabilitation, Regional Centers, and Independent Living Centers. The Exit Summary also provided an adult agency contact list. The

Exist Summary stated that the Student would be exited from District special education services on December 18, 2020, because she had “reached maximum age.”

An audiotape of the November 13, 2020 Exit Summary meeting indicated that the Advocate raised concerns that the Student was about to “age out,” she had not been receiving her IEP-required services during the shutdown, and she had regressed. The team discussed that many of the proposed summaries of the Student’s academic achievement and functional skills needed to be changed because they reflected the Student’s abilities before the shutdown and were no longer accurate. The Advocate stated that she and the Student’s mother wanted the Exit Summary to accurately reflect the Student’s current levels. The Advocate also noted that there was a standing request for some sort of compensatory remedy to make up for the lack of 1:1 in-person paraeducator support during virtual learning. The tape did not reflect that the District representatives responded to this request during the meeting.

The District exited the Student from special education services in December 2020 due to her age. Data provided to OCR by the District and the Complainant indicates that between March 16 and December 2020, the District never provided the 1:1 paraeducator services for her full instructional day required by her IEPs in March, May, and September of 2020 during her virtual learning program. In addition, the District never assessed, either before or after exiting the Student from special education services, the impact of this gap in provision of 1:1 paraeducator support and whether and to what extent she may need compensatory services or supports as a result.

Analysis

As described further below, OCR found that the District failed to provide a FAPE to the Student in violation of Section 504 and Title II. Specifically, OCR found that the District failed to provide the Student with the 1:1 paraeducator support required by her IEP during virtual learning based on considerations other than her individual educational needs, in violation of 34 C.F.R. § 104.33(a) and (b)(1)(i). OCR also determined that the District failed to conduct an evaluation prior to making this significant change in the Student’s placement in spring 2020, in violation of 34 C.F.R. § 104.35(a) and (c). OCR further found that the District failed to reevaluate whether her reduced paraeducator services during virtual learning were appropriate and designed to meet her individual educational needs when the Student’s parent notified the District that they were not because the Student was struggling and needed more support between April and December 2020. Despite this notice, the District did not consider her need for compensatory services to remedy its denial of a FAPE. In addition, OCR has a compliance concern that the District may have treated other students with disabilities on IEPs in the same way that it treated the Student in spring 2020 and August 2020 by reducing the services required by their IEPs based on considerations other than their individual educational needs and without conducting evaluations prior to making these significant changes in placement.

The evidence shows that the District’s decision to limit the services provided to the Student during virtual learning by denying her the 1:1 paraeducator support required by her IEP was not based on considerations regarding her individual educational needs and was a significant change

in placement made without having first conducted an evaluation. Prior to the District's transition to virtual learning, the Student's IEP required 1:1 paraeducator assistance throughout the school day in an in-person special education class. In April and August of 2020, the District communicated in writing to the Student's mother, along with all other parents of students with disabilities on IEPs, that it would be unable to provide the exact special education and related services written in IEPs during virtual learning. The District's communications stated that it would instead provide services to the extent possible and feasible, and noted that implementation of IEPs virtually may vary from implementation during in-person instruction at a school site. These communications attached Contingency and Distance Learning Plans for all students on IEPs.

The Contingency and Distance Learning Plans the District attached for the Student did not require 1:1 paraeducator support throughout the school day, as provided for in her IEP. The Contingency Plan stated that it was based on the individual needs of the student, but the evidence does not show that the District developed the Plan with parental input or based on an evaluation of the Student. In fact, the Plan acknowledged that the virtual learning program was not a "minute-for-minute replacement of the regular school day when schools are open" but was an "abbreviated and adjusted schedule to reflect the realities of the emergency circumstances." Even though the District informed the Student's mother that the Contingency and Distance Learning Plans did not change the Student's IEP, they did because the IEP continued to require 1:1 paraeducator support throughout the school day in a special education class, while the Plans called for the Student's placement to be in a virtual learning educational program without 1:1 paraeducator support throughout the school day for approximately nine months. The reduced services provided for in the Plans constituted a significant change in the Student's placement without the evaluation required by 34 C.F.R. § 104.35(a) and (c).

For the Student in this case, the evidence showed how the significant change in her placement denied the Student a FAPE. The facts indicate that during the 2019-20 school year, prior to the transition to virtual learning in March 2020, the Student was making progress on all of her IEP goals and had made significant behavioral progress. However, once the Student started virtual learning, the Student's mother informed the 2019-20 Case Manager that the Student was struggling, including behaviorally, first on April 9, 2020, and then repeatedly thereafter. The Advocate also repeated these concerns to the District in writing and during IEP meetings held throughout the virtual learning period, specifically stating that Student was regressing significantly and could not benefit from virtual learning without 1:1 in-person paraeducator support. The IEP team continued to document in the Student's IEPs of May 15, 2020 and September 24, 2020, that she required 1:1 paraeducator support throughout the school day in a special education class, but did not determine how the District could address her need for such support in the virtual setting or reevaluate if the reduced services it was providing in her virtual learning program were inadequate to her individual needs and were denying her a FAPE. For example, the IEP team did not consider, on an individualized basis, whether additional or alternative supports or services were appropriate or if 1:1 in-person paraeducator support should be implemented in the Student's home to ensure a FAPE given how much she was struggling and regressing, according to her mother and advocate. Instead, the IEP team relied on the Student's mother to provide her in-person 1:1 support during this time period and the Student was unable to sustain the previous progress on her IEP goals.

In addition, the evidence shows that the District did not develop and implement a plan to remedy its denial of FAPE to the Student during virtual learning, including whether compensatory education or services may be necessary. Recipient school districts are required to ensure that each student with a disability has access to educational opportunities, including all special and regular education, related aids, and services necessary to receive a FAPE. This remains true even if the circumstances that resulted in the denial of FAPE to a student with disabilities are not due to direct action or inaction by the district, such as the need to change to virtual learning due to the COVID-19 pandemic. When a district has failed to provide a FAPE to a student with disabilities, that student might be entitled to additional instruction and services, referred to as compensatory education or services, to remedy any educational or other deficits that result. Whether a student with a disability needs compensatory education or services as a result of virtual learning must be individually determined, consistent with the requirements of Section 504. A district can remedy the failure to provide a FAPE by making an individualized determination regarding whether and to what extent compensatory education or services are needed to address the denial of FAPE, including to make up for any skills that may have been lost.

Here, despite the District's documented lapse in the provision of the 1:1 paraeducator support required by the Student's IEPs during virtual learning, the District has not developed or implemented a plan to remedy this denial of FAPE. In May 2020, the Student's mother and the Advocate notified the District in writing that the Student was regressing during virtual learning due to the lack of in-person 1:1 paraeducator support and requested compensatory services to extend the Student's eligibility for special education services beyond December 2020 when she was scheduled to "age out." The District denied this request and stated that it had provided the Student a FAPE. The Advocate and the Student's mother continued to request consideration of compensatory services in writing and during IEP meetings, including during the Student's Exit Summary meeting in November 2020. However, to date the District has not considered whether and to what extent the Student needs compensatory education to address the lapse in provision of the 1:1 paraeducator support required by her IEPs during virtual learning. Instead, it exited the Student from its special education program effective December 2020.

Resolution Agreement and Conclusion

To address the violations and compliance concern identified during OCR's investigation, the District entered into the attached Resolution Agreement under Sections 302 and 303(b) of OCR's CPM. Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the District concurrently. When fully implemented, the Resolution Agreement is intended to address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with the terms of the Resolution Agreement and the statutes and regulations at issue in the case.

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.

Please be advised that the District may 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, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the cooperation extended by you in resolving this case. If you have any questions regarding this letter, please contact me at (415) 486-5504.

Sincerely,

A handwritten signature in black ink that reads "Sara Berman". The signature is written in a cursive, flowing style.

Sara Berman
Team Leader

Attachment

**Oxnard Union High
School District
Resolution Agreement
09-21-1113**

The Oxnard Union High School District (District) agrees to resolve the above-referenced complaint investigated by the U.S. Department of Education, Office for Civil Rights (OCR), by voluntarily entering into this Resolution Agreement (Agreement) to address the FAPE-based violations concerning an individual former student (the Former Student) and the compliance concern that OCR identified under 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, and 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. By entering into this Agreement, the District does not waive any affirmative defenses that it may have with regard to any subsequent claims raised by the Former Student or Other District Students with Disabilities, as defined herein, in any forum.

I. The Former Student

- a. The District will extend a written offer to the Former Student's parent (the Parent) to convene a meeting (the Meeting) comprised of a group of individuals knowledgeable of the Former Student's individual needs and educational program while a student of the District, including the Parent, to determine whether and what additional services, supports, and/or aids (Compensatory Services) are necessary to address the resulting impact on the Former Student due to the lack of an 1:1 paraeducator, in the home setting, during the Pandemic Period.¹ The written offer will include an opportunity for the Parent to invite persons knowledgeable about the Former Student's current needs to the Meeting.
- b. If the Parent accepts the District's offer, the District will convene the Meeting within thirty (30) calendar days after receipt of the acceptance.

During the Meeting the participants will consider the following:

- i. The type, frequency, and duration of regular or special education and related aids and services, including paraeducator support, required by the Former Student's individualized education programs (IEPs) in effect before and during the Pandemic Period.

¹ The Pandemic Period started on March 16, 2020, and is defined as the time the District was either providing remote learning instruction and/or hybrid in-person and remote learning instruction due to the COVID-19 pandemic to an enrolled student with an IEP or a Section 504 Plan.

- ii. The type, frequency, and duration of regular or special education and related aids and services, including paraeducator support, provided by or on behalf of the District during the Pandemic Period. Services provided by or at the expense of the Parent during the Pandemic Period will not be considered as services provided by or on behalf of the District.
 - iii. The Former Student's rate of progress or regression and level of performance before and during the Pandemic Period. If services were provided by or at the expense of the Parent during the Pandemic Period, the team will consider and determine what the Former Student's rate of progress or regression and level of performance would have been had the Former Student not received such services.
 - iv. The results of any evaluations of the Former Student conducted before or during the Pandemic Period.
 - v. Any other relevant information.
- c. The District will document the information considered by the participants of the Meeting and resulting determination, including the basis for the determination, in a written document signed by a District representative (Written Document). The District will make reasonable efforts to obtain the Parent's signature on the Written Document.
 - d. The District will provide the Parent notice of procedural safeguards under the Individuals with Disabilities Education Act (IDEA) and document such notice in the Written Document.
 - e. To the extent the Parent incurred any reasonable out-of-pocket expenses during the Pandemic Period to provide services required by the Former Student's IEP and not provided by the District, the District will reimburse the Parent for such expenses if the Parent provides the District reasonable documentation of the expenses, including, but not limited to, a paid invoice and canceled checks, bank statements, or credit card receipts.
 - f. If the participants in the Meeting determine that Compensatory Services are necessary, a description of the services, including when and how they will be implemented, will be memorialized in the Written Document. The District will ensure that the Compensatory Services are reasonably available for the Former Student to access. The Former Student has one (1) calendar year from the date of the Written Document to access the services ("Access Period"). Failure by the Former Student to access the services during the Access Period will result in forfeit of the services by the Former Student.

g. Reporting requirements:

- i. Within thirty (30) calendar days of Board approval of the Agreement, the District will provide OCR a copy of the written offer extended to the Parent under Section I.a. above.
- ii. Within five (5) business days of notice from the Parent, the District will inform OCR whether the Parent accepted the written offer. If so, the District will provide OCR a copy of the Written Document developed under Sections I.b.-f. above, within fifteen (15) calendar days of the Meeting.

II. Other District Students with Disabilities²

- a. The District will identify each other student or former student, including former students who have aged out of receiving IDEA services, who was enrolled in the District with an IEP or Section 504 Plan during the Pandemic Period and extend a written offer to the student's or former student's parent or guardian³ to convene a meeting (the Meeting) comprised of a group of individuals knowledgeable of the student's or former student's individual needs and educational program while a student of the District, including the parent or guardian, to determine: whether the student or former student was provided regular or special education and related aids and services designed to meet their individual needs during the Pandemic Period; and if not, whether and what compensatory services are necessary to address the resulting impact on the student or former student. The written offers for former students will include an opportunity for the parent or guardian to invite persons knowledgeable about the former student's current needs to the Meeting. The written offer will inform parents or guardians that they must notify the District within forty-five (45) calendar days of the date of the written offer of their intent to participate in the Meeting or provide a reasonable justification for needing additional response time.

If the District has already convened an IEP or 504 team and determined whether the District provided a student or former student the regular or special education and related aids and services designed to meet their individual needs during the Pandemic Period, and if the District did not, whether and what compensatory

² This provision excludes the following: 1) students or former students whose parent/guardian (or adult students on their own behalf) entered into a settlement agreement on behalf of the student or former student and resolved IDEA or Section 504 claims arising from the Pandemic Period in a special education due process procedure; 2) former students who graduated with a regular education high school diploma; 3) students who were exited from eligibility for services under IDEA or Section 504 based on a reevaluation of the student's needs and/or progress and with parent or guardian consent to the exit; and 4) students or former students whose parent or guardian revoked eligibility for services under IDEA or Section 504, or who revoked such services themselves as an adult.

³ The written offer will be sent to the student or former student if they are eighteen and not conserved.

services were necessary to address the resulting impact on the student or former student, the District will provide OCR documentation of that process for each such student or former student. OCR will assess whether the documentation shows that the IEP or 504 team made these determinations based on the individual needs of the student or former student and provided notice of procedural safeguards to the parent or guardian. If OCR determines that the District did not meet these requirements for a given student or former student, OCR will inform the District and the District will extend the written offer described in Section II.a. above to the student's or former student's parent or guardian.

- b. For parents and guardians who accept the District's written offer, the District will convene the Meetings for a third of the parents or guardians within sixty (60) calendar days of their acceptance, another third within one hundred and twenty (120) calendar days, and the final third within one hundred and within eighty (180) calendar days. The timeline to convene the Meetings will include only calendar days in months during which the District is in session for regular school year instruction..

The Meeting participants will determine on an individualized basis: whether the student or former student was provided regular or special education and related aids and services designed to meet their individual needs during the Pandemic Period; and if the student or former student was not, whether and what compensatory services are necessary to address the resulting impact on the student or former student.

During the Meeting the participants will consider the following:

- i. The type, frequency, and duration of regular or special education and related aids and services required by the student's or former student's Section 504 plan(s) or IEP(s) in effect before, during, and after the Pandemic Period.
- ii. The type, frequency, and duration of regular or special education and related aids and services provided by or on behalf of the District during the Pandemic Period. Services provided by or at the expense of the parent or guardian during the Pandemic Period will not be considered as services provided by or on behalf of the District.
- iii. The student's or former student's rate of progress or regression and level of performance before, during, and after the Pandemic Period. If services were provided by or at the expense of the parent or guardian during the Pandemic Period, the team will consider and determine what the student's or former student's rate of progress or regression and level of performance would have been had the student or former student not received such

services.

- iv. The results of any evaluations of the student or former student conducted before, during, and after the Pandemic Period.
 - v. Any other relevant information.
- c. The Meeting participants will also consider if reimbursement to the parent or guardian is appropriate for any reasonable out-of-pocket expenses by the parent or guardian to provide services that were required by the student's or former student's IEP or Section 504 Plan but were not provided by the District during the Pandemic Period. If the Meeting participants determine that out-of-pocket expenses were reasonable, to obtain reimbursement the parent or guardian must provide the District reasonable documentation of such expenses, including, but not limited to, a paid invoice and canceled checks, bank statements, or credit card receipts.
 - d. The District will document the information considered by the participants of the Meeting and resulting determination, including the basis for the determination, in a written document signed by a District representative (Written Document). The District will make reasonable efforts to obtain the parent or guardian's signature on the Written Document.
 - e. The District will provide the parent or guardian notice of procedural safeguards under the IDEA or Section 504 and document such notice in the Written Document.
 - f. If the participants in the Meeting determine that Compensatory Services are necessary, a description of the services, including when and how they will be implemented, will be memorialized in the Written Document. The District will ensure that the Compensatory Services are reasonably available for the student or former student to access.
 - g. Reporting requirements:
 - i. Within sixty (60) calendar days of Board approval of the Agreement, the District will provide OCR the list of students and former students identified under Section II.a.. No later than ninety (90) calendar days after Board approval of the Agreement, the District will provide OCR with one of the following: 1) copies of the written offer extended to each parent or guardian for the Meeting; or 2) documentation of the process for each student or former student for whom the District has already convened an IEP or 504 team and determined whether the District provided a student or former student the regular or special education and related aids and

services designed to meet their individual needs during the Pandemic Period, and if the District did not, whether and what compensatory services were necessary to address the resulting impact on the student or former student.

- ii. Within sixty (60) calendar days of the last Meeting convened pursuant to Section II.b., the District will provide OCR a list of all parents and guardians who accepted the written offers and a copy of the Written Documents developed under Section II.b.-f.

III. Training and Written Guidance

- a. The District will provide training and written guidance to all District personnel who routinely participate in IEP and/or Section 504 team meetings. The training and guidance will include the following:
 - i. The District's obligation to provide students with IEPs or Section 504 Plans a free, appropriate public education (FAPE), including regular or special education and related aids and services designed to meet their individual needs, during emergency conditions such as the COVID-19 pandemic.⁴
 - ii. The District's obligation to evaluate students with IEPs or Section 504 Plans in a manner consistent with the requirements of Section 504 and/or the IDEA during emergency conditions.
 - iii. If the District does not provide a student with services on his or her IEP or Section 504 Plan during emergency conditions, the District's obligation to convene an IEP or Section 504 Team Meeting and make an individualized determination regarding whether and to what extent the student needs Compensatory Services as a result.
 - iv. The District's obligation to ensure that any "Emergency Conditions Provisions" contained in a student's IEP or Section 504 Plan are based on the individual needs of the student.
- b. Reporting requirements:

⁴ The decision to provide any services contained in a student's IEP or 504 services in person during emergency conditions, such as wildfires or a global pandemic, must be made on an individualized basis, taking into consideration the health and safety of both the student and District staff and/or District-contracted staff.

- i. Within ninety (90) calendar days of Board approval of the Agreement, the District will provide OCR with draft written guidance and a draft outline of the training content for the guidance and training required by Section III.a.
- ii. Incorporating OCR's input, the District will complete the training and distribute the written guidance documents within sixty (60) calendar days of receiving OCR's input. By the same date, the District will report to OCR the following: the dates of the training(s); a list of participants, by title; the individual(s) conducting the trainings by title and qualifications; a summary of the training content; and a copy of any training materials used. The District will also provide OCR a copy of the final written guidance documents and confirm distribution.

General Requirements

By signing this Agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. During the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms and obligations of the Agreement. The District understands that OCR will not close the monitoring of this Agreement until such time as OCR determines that the District is in compliance with the terms of the Agreement and Section 504, Title II, and the implementing regulations, 34 C.F.R. Part 104 and 28 C.F.R. Part 35, at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice (DOJ) for judicial proceedings in the event of a breach. Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.



Dr. Tom McCoy, Superintendent



Date