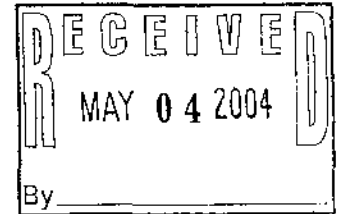




UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

APR 30 2004



Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, California 94102
www.ed.gov

COPY

Deborah Blair Porter

(In reply, please refer to #09-02-1407)

Dear Ms. Porter:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of your complaint against the Manhattan Beach Unified School District. Your complaint alleged that the District failed to provide students with disabilities at Mira Costa High School (School) a free, appropriate public education (FAPE), and has denied them access to certain programs at the School. For purposes of this letter, OCR has summarized the issues investigated as follows:

1. Whether the District/School failed to offer all students with disabilities regular and special education and related aids and services designed to meet their individual needs;
2. Whether the District/School failed to provide parents of students with disabilities with equal access to counseling and information provided to parents of nondisabled students concerning graduation requirements, academic standards, student assessment, and other education issues; and
3. Whether students with disabilities at the School are denied access to supplementary and remedial programs that are made available to nondisabled students.

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 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 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 and Title II.

OCR gathered evidence through interviews with the complainant, parents of students in the District, the principal of the School, vice principal and other District and School employees. OCR also reviewed documents and records submitted by the District and the complainant.

OCR determined that the District had developed a model of special education services at the School that was designed to enable most students with disabilities to participate fully in the general educational program of the School to the maximum extent appropriate. OCR concluded, however, that this model, as it was defined at the time of the investigation, did not offer some students the opportunity to receive the specific services that met their individual needs, as required by Section 504. OCR found that the effects of this problem were exacerbated by some parents' lack of clear information about program options and "accommodations" and their effect on graduation requirements. OCR did not find that students with disabilities or their parents were denied equal access to counseling, information provided to other students about School programs or materials, or remedial programs and services. However, the evidence indicated that there were barriers to the participation of students with disabilities in the School's Advancement Via Individual Determination (AVID) program. At the time of the investigation, the District was unable to show OCR that the selection criteria had been validated.

On April 29, 2004, the District, without admitting to any violation of law, submitted a resolution agreement which, when implemented, will resolve these compliance concerns.

The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Background

The School adopted a "Learning Center" (LC) model five years ago to provide services to students with disabilities who traditionally would have been educated in resource specialist (RSP) classes. The primary goal of the program is to enable students with disabilities to enroll in general education classes so that they can be educated with nondisabled students to the maximum extent appropriate to their needs. LC staff provide an extensive array of support services to students with disabilities, including assistance with assignments, instruction in study skills, a distraction-free environment for taking tests, class notes, monitoring of student progress, and assistance to general education teachers. The District has also eliminated most of its "general" track courses, and instead expects most students, both disabled and nondisabled, to enroll in classes that will prepare them for college. With the support offered through the LC, many students who might otherwise have enrolled in less challenging RSP classes are able to benefit from general education, college preparatory instruction.

The complaint in this case included a number of allegations concerning the shortcomings of the School's model and its failure to provide students with disabilities with the services

necessary to enable them to participate in the School's educational program and to meet the academic standards they needed to graduate from high school. The complaint alleged that students with disabilities who were unable to participate in college preparatory classes had no realistic option but to enroll in special day classes (SDC), which, in many cases, were too restrictive for their needs and provided instruction at too low a level. It alleged that students who did not enroll in college preparatory classes did not have access to instruction that addressed the high school standards, and particularly those needed to pass the California High School Exit Examination. It also alleged that parents were told that students who required substantive accommodations in their general education classes, would not receive high school graduation credit. Finally, it claimed that general education teachers did not receive adequate information about the accommodations or modifications required for the students in their classes with disabilities, and were unable or unwilling to provide these accommodations.

The complaint alleged that, as a result of all of these problems, students were inappropriately placed in SDC when a placement that more appropriately met their needs would have enabled them to interact more regularly with their non-disabled peers. The complaint also stated that parents did not receive sufficient information about the special education program, academic standards, and graduation requirements to enable them to participate effectively in their students' education, and that students in special education were excluded from remedial and supplemental programs provided to nondisabled students, especially those encountering difficulties fulfilling the requirements for high school graduation.

Issue 1: Whether the District denied a FAPE to students with disabilities at the School by failing to offer them regular and special education and related aids and services designed to meet their individual needs.

The regulations implementing Section 504, at 34 CFR § 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined in the regulation 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 nondisabled students are met. In determining the services to be provided, a district must adhere to the requirements of sections 104.34, 104.35, and 104.36 of the regulation. Pursuant to § 104.34, students with disabilities must be educated with nondisabled students to the maximum extent appropriate to their needs. § 104.35 requires districts to evaluate the individual needs of students who are or may be disabled, and to ensure that their placement is determined by a group of knowledgeable persons, drawing on information from a variety of sources about the students' individual needs. Section 104.36 sets forth requirements for providing parents with procedural safeguards, including adequate notice about decisions made with respect to their children's identification, evaluation and placement.

In determining the educational services to be provided to students with disabilities, districts must look closely at their individual needs, and determine the specific combination of services that will meet those needs. For this reason, it is important that districts offer a range of placement options, so that students are not denied the services they need because of the unavailability of particular placements, or because those services are incompatible with a particular program model. In addition, it is essential that parents receive adequate information about the programs and services available in the district, so that they are able to participate knowledgeably in placement decisions.

Our investigation showed the following:

- Most students enrolled in the LC program receive all of their core content instruction in mainstream classes. In most cases, these classes are considered college preparatory, since few "basic" classes are offered at the School. All direct support is provided outside these classes, primarily in a learning center. Most RSP students enroll in the LC for one period each day.
- The LC is staffed by resource specialists and aides, who provide students with individual and small group assistance with their coursework and homework, and with planning, organization, and study skills. LC staff collect class notes and assignments from all classes in which LC students enroll; these are available for student use in the Center. LC instructors also provide a few minutes of direct instruction in reading or writing at the beginning of most LC periods.
- Besides staffing the center, LC teachers interact extensively with general education teachers. Each LC teacher serves as a liaison with an academic department, providing necessary support to the general education teachers and collecting a monitoring report on the progress of each student on a weekly basis. Each LC teacher also has a caseload of students whom he or she closely monitors and support.
- Most of the IEPs of students in the LC program include accommodations to be used in the general classroom. The most common of these accommodations is extra time for assignments, flexible settings and timing for tests, notetaking, and special seating. A few students also receive shortened or modified assignments. OCR learned that, while "accommodations" were possible, students could not receive "modifications" to courses without losing graduation credit. Several parents reported their understanding that any significant changes to the format of assignments or tests would result in the loss of graduation credit.
- Resource specialists are responsible for informing general education teachers about the requirements of the IEPs of the students on their caseloads. OCR found that teachers were knowledgeable about the related aids and services

specified in their students' IEPs. OCR did not find evidence that mainstream teachers were not providing these services and accommodations.

- During the past two years, the District has developed an "essential standards" option, which enabled students with disabilities who are enrolled in college preparatory classes to receive graduation, but not college preparatory, credit for the class. According to the District, each department has, or is in the process of identifying, the State standards in each course that are essential to define mastery. Students are placed on essential standards by their IEP team; fewer than 10 students are currently so placed. Students under essential standards receive the same instruction on all standards as other students in their college preparatory classes, but their assignments and tests are evaluated based on the essential standards identified by the department, and they are given course credit if they have met those standards. OCR found considerable confusion and variation among teachers as to the content and use of essential standards.
- The School provides students with more severe disabilities a variety of placements, including SDC. Some students in the LC program enroll in one or more SDC classes. SDC teachers refer to the regular academic standards and, where appropriate, use many of the same materials used in general education classes. However, interviews with general education and SDC teachers, as well as parents, indicate that the instruction in these classes is geared toward students whose disabilities severely limit their ability to access the general curriculum. Most, though not all, of the students enrolled in the SDC had received SDC instruction in middle schools where RSP classes were also available.
- Most students receiving services in the LC were enrolled in resource specialist classes at their middle schools. The parents of some of these students informed OCR that they had requested direct, specialized instruction in core subjects at IEP meetings in preparation for high school enrollment, but had been told that such instruction was not available outside of SDC classes. These parents believed that SDC placements were not appropriate for their students, and that the LC did not provide sufficient in-class support to enable their students to take mainstream and college preparatory classes. Some of these students experience academic difficulty in the LC model; at least one student transferred to a private school to receive the direct, explicit instruction he required, at a level of instruction that was sufficiently challenging for him.
- IEP teams determine whether students with disabilities are considered "diploma bound." The IEPs of most LC students, and many SDC students, indicate that they are expected to receive high school diplomas. The District reported that, in most years, most diploma bound students do, in fact graduate. At the time of the investigation, the data suggested that a significant proportion of the twelfth grade

students in the LC were not expected to receive diplomas, mostly because of their inability to pass District proficiency examinations required for graduation.

Based on the observations described above, the District's program model did not include an option for students for whom special day classes are not appropriate, but who need direct and explicit instruction in some subject areas, using methodologies that are designed to address the learning needs of students with disabilities. The complete absence of such an option deprived some students with disabilities of the specific services they needed in order to ensure that their individual educational needs were met as adequately as those of nondisabled students. The testimony of parents, and the School records indicating that a number of LC seniors are not currently expected to graduate on time with diplomas, provide further indication that additional program options may be needed.

OCR notes that the District has taken some steps to address the need for new program options. The School offers reading classes, some of which are taught by a resource specialist, which should improve students' ability to access the core curriculum. The School informed OCR that it expects to offer mathematics support classes to students who are having difficulty passing mathematics competency or CAHSEE examinations. It is not yet clear whether these classes will be specifically geared to the learning needs of students with disabilities. The essential standards option also provides a means for students who cannot achieve at a college preparatory level to receive high school graduation credit for general education courses. However, students using this option receive only modifications in grading, not specialized instruction. While all of these options may address the needs of some students, they do not address the need for instruction in content areas using specific methodologies designed for disabled students' needs.

OCR also examined the extent to which the District's distinction between "accommodations" (adaptations in course delivery which do not change the content of the class) and "modifications" (substantive alterations of instructional standards) further limited services available to students with disabilities in general education classrooms. OCR found evidence of considerable confusion among both parents and staff about proposed changes in tests or assignments and whether they would deprive a student of credit for a class. While the School is not required to substantively modify the standards essential to a class, it may need to alter the delivery of those standards or the format of assignments or tests designed to assess them in order to comply with the requirements of Section 504. Such adaptations may be especially important where, as here, the differing educational needs of students with disabilities are expected to be addressed in mainstream classrooms.

OCR also found that parents' confusion concerning the options available to them, and the effect of these options on their students' ability to graduate from high school may have impeded their ability to understand and participate in the development of their

placements. In particular, parents cited confusion about the “essential standards” option and about the effect on high school graduation of participation in the SDC program.

The evidence did not support the complainants’ contention that general education teachers did not provide students with the aids and services listed on their IEPs. OCR determined that LC staff maintained close contact with general education teachers, provided them with information about students and assistance in them, and even guided their placement in classes with teachers whose instructional styles were especially suited to students’ needs. OCR interviewed a number of general education teachers, all of whom were able to describe the services and accommodations listed on their students IEPs and the ways in which they provided these services.

While OCR found that the District’s LC model was well-aligned to the objective of least restrictive environment it did not suffice by itself as a placement option to provide all non-SDC students with disabilities a FAPE. The model is currently implemented in a manner that prevents the School from fully addressing the individual needs of some students with disabilities. OCR concluded that, because of the absence of an option for providing direct special education content instruction to those students whose individual needs require such instruction, and because of a lack of clarity among staff and parents concerning the options and course adaptations that are available, the District had not fully provided a FAPE to some of the students with disabilities at the School.

In a resolution agreement dated April 29, 2004, the District agreed to define a program option which would include direct instruction to students whose individual needs are not met in the LC as it currently operates, but for whom placement in a SDC would be inappropriate. The resolution agreement neither contemplates eliminating the LC model nor prescribing another particular model, rather it is focused on ensuring a full continuum of placement options for students with disabilities.

In the resolution process with OCR, the District also agreed to create a clear description of the various program options for parents and to allow them to request a change in placement based on this information if appropriate. The District further agreed to develop written guidance for parents and staff explaining disability-related accommodations and modifications, and their effect on students’ ability to obtain graduation or college preparatory credit for classes. OCR has concluded that these commitments, when implemented, will resolve the compliance concerns outlined above.

Issue 2: Whether the District failed to provide parents of students with disabilities with equal access to counseling and information provided to parents of nondisabled students concerning graduation requirements, academic standards, student assessment, and other education issues

Section 104.4(b)(ii) and (iii) prohibit recipients of Federal financial assistance from affording individuals with disabilities with benefits or services that are not equal to, or not as effective as, benefits or services provided to nondisabled persons. Title II includes similar prohibitions. In addition, section 104.37 requires school districts to provide nonacademic and extracurricular services and activities, including counseling services, in such a manner as is necessary to afford students with disabilities and equal opportunity to participate. Pursuant to these requirements, schools must ensure that information and services provided to nondisabled students and their parents is also provided to students with disabilities and their parents.

Our investigation showed the following:

- Parents of all 8th graders at District middle schools are invited to a high school orientation meeting in early March, at which the high school program is explained and parents have an opportunity to ask questions. These meetings include general information sessions, open to all parents, as well as breakout sessions for parents of students in special education. In addition, all parents receive information about graduation requirements, academic standards and other curricular issues at the beginning of the year ("Back to School Night") and in a second parent meeting in the spring.
- In reviewing School documents, OCR found that the high school graduation requirements are published in the 1st page after the table of contents in the Course description book and in the "Freshman program planning handbook" given to all parents at the Fall meeting.
- All students, whether or not they are in special education classes, are assigned alphabetically to counselors (called academic advisors). Students first meet with their counselors prior to the beginning of the 9th grade year to discuss their programs and graduation requirements. After the first quarter grades come out the counselors meet with students to develop a "4 year plan". Counselors also monitor students' grades and progress toward graduation. Regular counselors provide the same counseling services to LC students as to nondisabled students.
- The School employs a "special needs" academic advisor, who is responsible for facilitating IEP meetings and working with special and general education teachers to meet the needs of students with disabilities. While students in the SDC and inclusion programs are assigned to regular counselors, the special needs advisor provides most monitoring and counseling services to them.
- The School also employs two college and career counselors. These counselors provide information to students in their general English classes, as well as providing additional individual support. They also make presentations in SDC classes.

Based on the factual findings outlined above, OCR found that students with disabilities or their parents are not denied equal access to counseling services or to school information provided to nondisabled students. To the extent that confusing information was provided to parents about the effects of various special education options of students' ability to fulfill graduation requirements, this issue has been addressed by the findings and resolution agreement described in the previous section. However, OCR determined that the District did not violate the Section 504 regulations by subjecting students with disabilities or their parents to unequal treatment in connection with this allegation.

Issue 3: Whether students with disabilities are denied access to supplementary and remedial programs that are made available to nondisabled students.

The portions of the Section 504 and Title II regulations that require equal treatment of individuals with disabilities, as well as those governing nonacademic services, require districts to ensure that students with disabilities are provided an equal opportunity to participate in programs designed to help students succeed in school or attend college. Such programs need not be fundamentally altered to accommodate students with disabilities. However, students who are otherwise qualified may not be excluded from participating because of their disability, or because of an eligibility requirement that measures their disability rather than their ability to participate in the program. 34 CFR §104.4(b)(4) and 34 CFR §104.31(b). See also 34 CFR §104.44(c).

Our investigation showed the following:

- The only formal remediation program currently offered at the School is a reading class. Participation in the program is based on student reading level and test scores. The class, which is sponsored through special state and federal funding, is taught during several periods by a reading specialist. A resource specialist trained in the same program also teaches several sections of the course. A substantial number of students with disabilities are enrolled in both teachers' classes. The School plans to begin offering math remediation classes next year to help students who have not passed the district proficiency tests and/or the CAHSEE. This program will be offered to students with disabilities.
- The School also offers a general education after school tutoring programs, which is open to all students, as well as after school tutoring specifically designed for students in special education.
- Although the School has offered before and after school classes in prior years for students who have difficulty passing the CAHSEE, such support has not been provided during the current school year.

- The School has an AVID program. AVID is a statewide in-school academic support program that prepares students for college eligibility and success. The School program is geared toward students with high skills who are not currently enrolled in the most advanced courses offered at the School.
- Most students enroll in the AVID program in ninth grade, and are expected to remain in the program throughout their enrollment in high school. AVID classes, which are taken as electives, focus on academic and study skills that are seen as essential for college, preparation for college entrance examinations, assistance on completing college applications and field trips and other college awareness activities.
- Students are accepted into the School's AVID program by application; there are more applications than available positions. In order to be accepted in the program, students must score above the 50th percentile on the CAT 6 test and meet several other selection criteria.
- OCR determined that the School's test score criterion for participation in AVID was inconsistent with that used in most other districts in the state. The director and founder of the state AVID program informed OCR that districts generally focus on students' grades and interest in college. She stated that a large number of students who receive special education participate in AVID programs, and expressed a concern that a criterion that required specified tests scores would be likely to exclude many of these students.
- Only one of the 153 students in AVID receives special education services. The District was not able to explain the absence of students with disabilities in the program. A School administrator suggested that the lack of representation of special education students in AVID may be due to the fact that students cannot accommodate the LC support class and another elective class. OCR noted, however, that students in the LC program are also enrolled in a variety of elective classes.

OCR determined that students with disabilities are not excluded from remedial classes or after school support programs offered at the School. OCR found, however, that the District has selection criteria for the AVID program which are unique to the District. It is possible that these criteria are closely related to the specific purposes of the AVID program offered at the School, and that no alternative criteria would be equally effective in selecting qualified participants. However, OCR did not find evidence to indicate that the School had carefully considered whether its criteria excluded students with disabilities from AVID, or whether other selection criteria could be used to identify students who are otherwise qualified for the program and likely to be successful in it. In addition, while OCR recognizes that enrollment in the LC imposes time constraints on students with disabilities, it is important that the District's choice of service model not

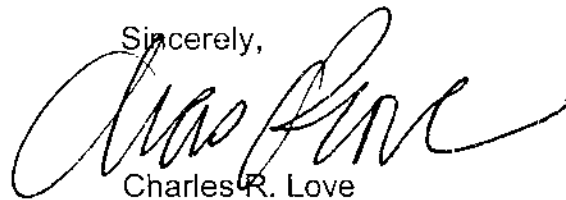
prevent students from participating in college preparatory programs while receiving the special education support they need. In light of these circumstances, OCR concluded that the eligibility and selection process currently in place for the AVID program was not consistent with the requirements of the regulations.

In its Resolution Agreement, the District agreed to conduct its own evaluation of the AVID program to determine what, if any, impediments exist to enrollment of students with disabilities. Completion of this process will resolve this issue.

OCR has determined that the agreements contained in the attached Resolution Agreement, when fully implemented, will resolve the non-compliance findings discussed in this letter. OCR is closing the investigative phase of this complaint as of the date of this letter. OCR will monitor the implementation of the Resolution Agreement and may reopen this complaint if OCR determines the District is not implementing the provisions of the Agreement.

If you have any questions about this letter, please call Nicole Larkin, Investigator, at (415) 556-4230.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles R. Love". The signature is fluid and cursive, with a large initial "C" and "L".

Charles R. Love
Program Manager